

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

D.B.,)	
)	
Plaintiff,)	
)	Cause 4:12-CV-00654-JAR
vs.)	
)	
ST. CHARLES COUNTY,)	
MISSOURI; and JASON)	
KING,)	
)	
Defendants.)	

DEPOSITION OF SHERIFF TOM NEER
TAKEN ON BEHALF OF PLAINTIFF
JULY 23, 2013

REPORTED BY TINA MARIE CATLETT
CERTIFIED COURT REPORTER, #946

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CERTIFIED QUESTION

I, Tina Marie Catlett, a court reporter in and for the County of St. Louis, State of Missouri, do hereby certify that on the 23rd day of July, 2013, beginning at the hour of 10:00, at the offices of St. Charles County Counselor's Office, 100 North Third Street, Suite 216, St. Charles, Missouri 63301, there appeared before me Sheriff Tom Neer for the purpose of having his deposition taken:

CERTIFIED QUESTIONS:

Page 7 Line 25:

Q. When I asked the question about discipline, I include in that any suspensions?

Page 8 Line 21:

Q. Was he the subject of an internal affairs investigation?

Page 23 Line 19:

Q. Now, did you order that an internal affairs investigation be conducted with regard to Deputy Hunt?

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 2nd day of August, A.D., 2013.

Tina Marie Catlett, CCR

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MISSOURI; and JASON)
KING,)
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Defendants.)

DEPOSITION OF SHERIFF TOM NEER, produced, sworn, and examined on the 23rd day of July, 2013, between the hours of eight o'clock in the forenoon of that day and six o'clock in the afternoon of that day at the St. Charles County Counselor's Office, 100 North Third Street, Suite 216, State of Missouri, before TINA MARIE CATLETT, a Certified Shorthand Reporter within and for the State of Missouri, in a certain cause now pending in the United States District Court, Eastern District of Missouri, Eastern Division, taken on behalf of Plaintiff D.B.

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APPEARANCES

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St. Louis, Missouri 63017
(314) 726-0800

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- 1 A. **Yes, he has.**
2 Q. Jury returned a verdict?
3 A. **Yes, they did.**
4 Q. And he was sentenced, correct?
5 A. **Yes, he was.**
6 Q. What was the charge he was tried and
7 convicted of?
8 A. **Burglary, assault, property damage, I**
9 **believe.**
10 Q. When did that occur, the incident giving
11 rise to those charges?
12 A. **February of '08, I believe, or '09.**
13 Q. What is his job with the St. Charles
14 County Sheriff's Department now?
15 A. **Right now he does administrative duties,**
16 **in-house officer.**
17 Q. Is the result of him being charged or at
18 any point in the process after he was charged, did
19 he ever receive any discipline from St. Charles
20 County?
21 A. **Since he was charged?**
22 Q. From the time he was charged until
23 today.
24 A. **No.**
25 Q. When I asked the question about

6

- 1 SHERIFF TOM NEER,
2 of lawful age, being first duly sworn to tell the
3 truth, the whole truth, and nothing but the truth,
4 deposes and says in behalf of the Plaintiff as
5 follows:
6 DIRECT EXAMINATION
7 QUESTIONS BY MR. RYALS:
8 Q. State your name, sir.
9 A. **Thomas W. Neer.**
10 Q. You're the sheriff of St. Charles
11 County?
12 A. **Yes, I am.**
13 Q. Elected by the people of St. Charles
14 County?
15 A. **This time, yes.**
16 Q. This time?
17 A. **Yes. I've been appointed twice.**
18 Q. Sheriff, do you have any convicted
19 felons on the payroll at St. Charles County?
20 A. **Convicted felons?**
21 Q. Yes.
22 A. **I have one under appeal.**
23 Q. Is that Christopher Hunt?
24 A. **Yes, it is.**
25 Q. He has been tried, correct?

8

- 1 discipline, I include in that any suspensions.
2 A. **I'm not going to answer that, sir, you**
3 **are getting into the personnel issues of one of the**
4 **employees so I'm not going to answer that question.**
5 Q. Well, we will certify that question.
6 Okay?
7 (QUESTION CERTIFIED)
8 MS. TEMPLE: I believe that the
9 objection is that it is protected information under
10 the Missouri Sunshine Law.
11 MR. RYALS: That would be a good
12 objection if the Sunshine Law applied to discovery
13 in a federal civil rights lawsuit and it doesn't.
14 QUESTIONS BY MR. RYALS:
15 Q. So you are not going to answer the
16 question --
17 A. **No, sir.**
18 Q. -- Whether he was suspended?
19 A. **No, sir.**
20 Q. Was he the subject of an internal
21 affairs investigation?
22 A. **Once again, that's information relevant**
23 **to the personnel file of an employee. I refuse to**
24 **answer that one.**
25 MS. TEMPLE: Same objection.

1 MR. RYALS: We will certify that as
 2 well.
 3 (CERTIFIED QUESTION)
 4 QUESTIONS BY MR. RYALS:
 5 Q. Does your department have an internal
 6 affairs function?
 7 A. **Yes, we do.**
 8 Q. How long have you been the sheriff?
 9 A. **Eight-and-a-half years.**
 10 Q. This time?
 11 A. **This time.**
 12 Q. When were you the sheriff before?
 13 A. **1991, from September through November I**
 14 **was appointed interim sheriff.**
 15 Q. By who?
 16 A. **By the, at that time, county commission.**
 17 Q. Was that between tenures of elected
 18 sheriffs?
 19 A. **I don't understand your question, sir.**
 20 Q. The question is, what precipitated there
 21 being an opening for the sheriff?
 22 A. **The elected sheriff vacated the office.**
 23 Q. Who was that?
 24 A. **Edward Uebinger.**
 25 Q. He resigned or --

1 A. **He resigned to go to law school.**
 2 Q. And then you were appointed for a period
 3 of three --
 4 A. **Until the next general election, yes.**
 5 Q. Who was elected in that next election?
 6 A. **Ray Runyon.**
 7 Q. Did you run in that election?
 8 A. **No, sir.**
 9 Q. What was your rank in the department?
 10 A. **At that time?**
 11 Q. Yes, sir.
 12 A. **Captain.**
 13 Q. Were there any personnel who had a rank
 14 superior to captain at that time?
 15 A. **Sheriff.**
 16 Q. No major?
 17 A. **No.**
 18 Q. So you served under Uebinger and then
 19 Runyon. Were there other times when you were
 20 appointed?
 21 A. **No, just this last one.**
 22 Q. And tell me about the event that
 23 precipitated you were appointed to --
 24 A. **The elected sheriff vacated the office.**
 25 Q. Who was that?

1 A. **Tim Swope.**
 2 Q. He resigned?
 3 A. **Yes.**
 4 Q. When was that?
 5 A. **He resigned early 2005.**
 6 Q. What was your rank when you were
 7 appointed when Sheriff Swope resigned?
 8 A. **Captain.**
 9 Q. Did anybody have superior rank to you at
 10 that time?
 11 A. **No.**
 12 Q. Were there any other captains in the
 13 department?
 14 A. **Yes.**
 15 Q. Who were they?
 16 A. **'91, one of them was Glen Welker. This**
 17 **last time it was Dave Kaiser, Wes Simcox, Dave**
 18 **Todd.**
 19 Q. Who appointed you this last time in
 20 2005?
 21 A. **I went through a evaluation process and**
 22 **was ultimately appointed by the executive, county**
 23 **executive.**
 24 Q. Is that Steve Ehlmann?
 25 A. **No, Joe Ortwerth.**

1 Q. Did you then stand for election after
 2 you were appointed?
 3 A. **Yes, sir, I did.**
 4 Q. What year was that general election?
 5 A. **Election was 2006.**
 6 Q. And you won the election, correct?
 7 A. **Yes.**
 8 Q. And served ever since?
 9 A. **Yes.**
 10 Q. Since '06, have you had to stand for
 11 reelection?
 12 A. **Once.**
 13 Q. Would that have been in '10?
 14 A. **Yes.**
 15 Q. When is the next general?
 16 A. **2014.**
 17 Q. Do you intend to run again?
 18 A. **I haven't decided.**
 19 Q. Is there a movement afoot to change the
 20 county sheriff's department from a sheriff's
 21 department to a police agency?
 22 A. **It's more than a movement. It's going**
 23 **to occur.**
 24 Q. Did you initiate that?
 25 A. **Yes, I did.**

1 Q. Why?

2 A. **In order to try to ensure that**
 3 **St. Charles County would have a qualified law**
 4 **enforcement manager in the future. Tried to**
 5 **eliminate as much internal politics as possible**
 6 **under the current system.**

7 Q. When will that occur, sir?

8 A. **January 1st, 2015.**

9 Q. What do you mean by your statement that
 10 you wanted to ensure that the law enforcement
 11 agency had a, how did you put it, qualified?

12 A. **Qualified law enforcement manager.**
 13 **There are several reasons. In the past I worked**
 14 **for six different sheriffs. Two of those six**
 15 **sheriffs weren't qualified to command an outhouse,**
 16 **and this is 2013. Law enforcement in this county**
 17 **has changed and right now, up until this year, a**
 18 **sheriff didn't have to have any qualifications at**
 19 **all, didn't even have to be a licensed law**
 20 **enforcement officer. Legislature just passed a law**
 21 **to where now a sheriff will have to be a licensed**
 22 **peace officer in the state of Missouri before he or**
 23 **she can even file. That's one qualification. A**
 24 **registered voter, no felonies, but there's no**
 25 **requirement for any law enforcement experience,**

1 **management experience, management training,**
 2 **administrative training. And the way the elections**
 3 **go, we could wind up the same way it was a few**
 4 **years back under those so-called managers who did**
 5 **not have the qualifications to manage a**
 6 **contemporary law enforcement agency.**

7 Q. Which sheriffs did you serve under, sir?

8 A. **Start with, do you want all of them?**

9 Q. Well, you said you served under six was
 10 it?

11 A. **Yes, six sheriffs.**

12 Q. Who was it?

13 A. **Robert Koester.**

14 Q. Koester?

15 A. **Koester, yes.**

16 Q. All right.

17 A. **Guy Lee Koester.**

18 Q. All right.

19 A. **Edward Uebinger.**

20 Q. All right.

A. **Ray Runyon.**

22 Q. All right.

23 A. **Doug Salters and Tim Swope.**

24 Q. Which of those two didn't have the
 25 qualifications to manage an outhouse?

1 A. **Swope and Koester too.**

2 Q. You obviously have given this a great
 3 deal of thought. What do you think are the minimum
 4 qualifications to hold the office of sheriff of
 5 St. Charles County?

6 A. **I think they're abysmal.**

7 Q. No. No. My question is unclear, I think.
 8 What do you believe the minimal qualifications
 9 should be or what qualifications should the sheriff
 10 have at a minimum?

11 A. **Oh, okay. At least 15 years law**
 12 **enforcement experience with a minimum of at least**
 13 **six of those in a command position or**
 14 **administrative position. I believe should be,**
 15 **should have completed a law enforcement**
 16 **administrative nationally recognized law**
 17 **enforcement administrative course such as**
 18 **Northwestern Staff and Command, Southern Police**
 19 **Institute, FBI National Academy, something of that**
 20 **caliber that's nationally recognized.**

21 Q. Anything else?

22 A. **That's good starters.**

23 Q. You attended the FBI National Academy,
 24 correct?

25 A. **Yes, I did.**

1 Q. When was that?

2 A. **1990.**

3 Q. Did you attend those other courses you
 4 mentioned?

5 A. **No. I attended other law enforcement**
 6 **administrative training and schools but not**
 7 **Northwestern or Southern Police Institute.**

8 Q. You're familiar with CALEA?

9 A. **Yes.**

10 Q. Acronym for Commission on Accreditation
 11 of Law Enforcement Agencies?

12 A. **Yes.**

13 Q. Is the St. Charles County Sheriff's
 14 Department CALEA certified?

15 A. **We were.**

16 Q. When was that?

17 A. **'86 through '90, and when we went for**
 18 **recertification the county refused to fund the**
 19 **process so we didn't get back into it.**

20 Q. Who was the sheriff when the CALEA
 21 certification was earned?

22 A. **Ed Uebinger**

23 Q. Your mention of the county funding
 24 prompts a question about the relationship between
 25 the sheriff's department and St. Charles County.

1 How would you describe that relationship, and let
2 me preface it further. When there was a vacancy in
3 the sheriff's department for the sheriff, you went
through a process on two occasions where you were
appointed, correct?

6 A. Yes.

7 Q. Otherwise, a sheriff is elected; is that
8 correct?

9 A. Yes.

10 Q. What other interactions does the sheriff
11 have with county government?

12 A. It really depends on the sheriff. We've
13 had some sheriffs who are of the opinion they are
14 the elected, they are elected by the people and
15 they answer only to the people and they are not
16 answerable to county government. I don't manage
17 the sheriff's department that way. I manage more
18 in lines of a police agency. Right now, my
19 relationship with county government is very good.
20 I wouldn't say excellent because we have our
21 differences of opinion. However, an elected
22 official still has to understand that the county
23 human resources department oversees the hiring and
24 firing of personnel. The budget director, finance
25 director is the one who pretty well designates how

1 much money you're going to get to spend on the
2 agency. Let me rephrase that. Human resources and
3 budget committee determines how many personnel you
4 are going to have. So it's a good idea to get
5 along with people who hold the money and hold the
6 personnel strings.

7 Q. In terms of chain of command reporting,
8 does the sheriff have anyone above him in the chain
9 of command other than the voters?

10 A. No.

11 Q. Is it accurate then to say that the
12 sheriff is solely responsible for the policies of
13 the sheriff's department?

14 A. Yes, sir, it is.

15 Q. Does the county have any authority,
16 either legally set forth or in practice, to affect
17 any control of the policies of the sheriff's
18 department?

19 A. There's a personnel administration
20 program that the county personnel department has.
So as far as our policies, we can't create a policy
22 that counters or exceeds the personnel
23 administration program that the county has for all
24 employees.

25 Q. All right. And I take it the control of

1 the purse strings that you have described could
2 also affect the operation of the department?

3 A. Oh, certainly.

4 Q. But as far as what the policies call
5 for, use of force policy, internal affairs
6 organization, the various units within the
7 sheriff's department, that's the sheriff's
8 decision?

9 A. Operational policies, yes.

10 Q. With regard to Christopher Hunt's
11 continued employment, was that a decision that you
12 made?

13 A. Yes, it was.

14 Q. Did you have the ability to terminate
15 Deputy Hunt's employment?

16 A. Yes, I do.

17 Q. And you decided not to do that, correct?

18 A. Correct.

19 Q. Did you have the power to terminate
20 Jason King?

21 A. Let me rephrase terminate. I can
22 recommend termination. I do not have the authority
23 to terminate, hire or terminate an individual.

24 Q. Where do you recommend that to?

25 A. That has to go to the director of

1 administration has to approve that through human
2 resources.

3 Q. Did you recommend that Deputy Hunt be
4 terminated?

5 A. No.

6 Q. Did you recommend that Jason King be
7 terminated?

8 A. Yes.

9 Q. Was Jason King actually terminated?

10 A. He resigned.

11 Q. Have you read his deposition testimony?

12 A. Some of it, yes.

13 Q. Did you see where he described an event
14 where he was called into your office and had a
15 conversation with you around whether he would stay
16 employed or not?

17 A. Yes.

18 Q. And of course the record will speak for
19 itself, but I believe what he said was he was told
20 you can either resign or you'll be fired.

21 A. That's a lie.

22 Q. It's a lie?

23 A. It is a lie, yes, sir.

24 Q. What actually happened?

25 A. The day he was scheduled for his meeting

1 to present the termination letter, he came in with
2 a box with his equipment and asked if he could
3 resign.

Q. I see. Just so I'm clear, you called
him in for a meeting, you and he?

6 A. Well, the bureau commander handles those
7 issues, but he did come down the hall towards my
8 office with a box and he came into my office, asked
9 if he could resign, and I said yes, I need a
10 letter.

11 Q. Your belief was that on that day, had he
12 not resigned, he was going to receive a letter
13 notifying him he was terminated?

14 A. Yes.

15 Q. Was there ever an internal investigation
16 conducted regarding Jason King?

17 A. Yes.

18 Q. What prompted that internal
19 investigation?

20 A. Complainant coming to our office, filing
21 a complaint, and discussing the circumstances with
22 the supervisor who was on duty at that time. And
23 the supervisor took it to the bureau commander,
24 bureau of field operations. They brought it to my
attention and I directed an internal affairs

1 investigation.

2 Q. Did anyone else in the sheriff's
3 department at that time have the ability to direct
4 an internal affairs investigation?

5 A. No.

6 Q. When the sheriff initiates an internal
7 affairs investigation, is there an automatic
8 protocol that would be followed following that
9 directive?

10 A. Yes.

11 (PLAINTIFF'S EXHIBIT NOS. 1 THROUGH 4 WERE
12 MARKED FOR IDENTIFICATION)

13 QUESTIONS BY MR. RYALS:

14 Q. Sheriff, this is Exhibit 1.

15 A. Do you want me to respond?

16 Q. I'm just showing it to you. You have
17 had a chance to look at it?

18 A. Yes.

19 Q. And your counsel as well?

20 A. Yes, sir.

Q. I represent to you that this was
provided to us in response to a request to produce
documents and it appears to me to be part of the
policy manual from the sheriff's department.

25 A. Yes, sir.

1 Q. And the heading on it is internal
2 affairs?

3 A. Yes, sir.

4 Q. And it's three pages, correct?

5 A. Yes, sir.

6 Q. Before I interrupted to mark this, I
7 think the question was to the effect of is there a
8 protocol that is followed in the sheriff's
9 department when an internal investigation is
10 conducted?

11 A. Yes, sir.

12 Q. Would Exhibit 1 reflect that protocol?

13 A. Yes, sir, it does.

14 Q. Are there any additional directives or
15 written matter that would tell someone interested
16 in the internal affairs protocol about how they are
17 conducted?

18 A. No, sir, this is complete.

19 Q. Now, did you order that an internal
20 affairs investigation be conducted with regard to
21 Deputy Hunt?

22 MS. TEMPLE: I think we've already
23 objected to that and it's irrelevant as to whether
24 or not Jason King in this case.

25 QUESTIONS BY MR. RYALS:

1 Q. Do you understand the question, sir?

2 A. I'm not going to answer that question,
3 sir.

4 MS. TEMPLE: His question was whether or
5 not you understood it.

6 THE WITNESS: I understand the question,
7 yes, sir.

8 QUESTIONS BY MR. RYALS:

9 Q. And you're not going to tell me whether
10 you ordered an internal investigation into Deputy
11 Hunt?

12 A. No.

13 Q. The answer is yes, you're not going to?

14 A. Yes, sir, I'm not going to answer it.

15 MR. RYALS: And that will be certified
16 as well.

17 (CERTIFIED QUESTION)

18 QUESTIONS BY MR. RYALS:

19 Q. This is Exhibit 2.

20 A. Yes, sir.

21 Q. What is that?

22 A. This is a record of our disciplinary
23 actions from January of 2006 until to date or close
24 to, which is May 19th of this year.

25 Q. I think your answer is complete in this

1 respect, but is it accurate to say that if a
2 deputy -- strike that.

3 Is that the proper title to give to a
4 member of your agency or --

5 A. **Patrol division, yes.**

6 Q. Some of these may involve sergeants or
7 lieutenants?

8 A. **Yes.**

9 Q. And they wouldn't be referred to as
10 deputies, correct?

11 A. **I would refer to -- well, a general
12 classification is deputy sheriff. They may be
13 referred to as sergeant or lieutenant in paperwork
14 throughout the agency.**

15 Q. If I use the term sworn member,

16 A. **Yes.**

17 Q. -- would that refer to every law
18 enforcement officer in the sheriff's department?

19 A. **Every commissioned officer, yes.**

20 Q. Does Exhibit 2 reflect all of the
21 internal investigations that were initiated as to
22 any sworn member from the dates indicated in this
23 document?

24 A. **The results on this document are not all
25 results of internal investigations.**

1 Q. But are all internal investigations
2 reflected in this document?

3 A. **Yes.**

4 Q. In addition, the result -- or strike
5 that.

6 The incident or the charge of the
7 allegation is reflected?

8 A. **Yes.**

9 Q. And the result of the investigation?

10 A. **Yes. Should be. That's not to say,
11 there may be an incident where personnel makes
12 these entries. They may have forgotten an entry or
13 something of that nature, but overall, that
14 document should reflect all of the disciplinary
15 action from 2006 to date of all personnel.**

16 Q. All right. Would it reflect an
17 allegation against a sworn member where no
18 disciplinary action was taken?

19 A. **No.**

20 MS. TEMPLE: This is blank.

21 THE WITNESS: It's just an error on the
22 personnel department of an entry.

23 MS. TEMPLE: You need to tell him that.

24 THE WITNESS: Well, I indicated there
25 may from time to time be a clerical error.

1 QUESTIONS BY MR. RYALS:

2 Q. Right. Does there exist a document that
3 would detail every instance where there was a
4 complaint and no discipline meted out?

5 A. **No.**

6 Q. Is this document, Exhibit 2, one that
7 was prepared in response to our request for
8 information or is it --

9 A. **This is an ongoing document we've had
10 for years.**

11 Q. I see. With regard to Exhibit 2, you
12 distinguish between internal affairs investigations
13 and other types of investigations; is that correct?
14 That is --

15 A. **Not on the spreadsheet.**

16 Q. Right.

17 A. **It wouldn't indicate if it's an IA or if
18 it was a citizen's complaint or if it was a fellow
19 officer's complaint. It is just a complaint, and
20 the disciplinary actions taken as a result of that
21 complaint, that complaint was verified.**

22 Q. What I understood you to testify to was
23 that the Exhibit 2 does -- not every single item
24 listed on Exhibit 2 was an internal affairs
25 complaint?

1 A. **Correct.**

2 Q. All right. That's what I wanted to get
3 to. If it's not an internal affairs complaint, how
4 would you otherwise characterize it?

5 A. **From time to time there's complaints
6 from citizens or -- well, most of these are all
7 complaints from citizens over a period of time.
8 They could be either written complaints that come
9 or they can be phone complaints.**

10 Q. Within Exhibit 2 though, there are
11 instances of internal affairs, complaints, and
12 investigations?

13 A. **Yes, sir.**

14 Q. And there's no way to tell by looking at
15 Exhibit 2 which are which?

16 A. **No, sir.**

17 Q. What determines when a, let's take a
18 citizen's complaint either by phone or in writing,
19 what determines when that is treated as an internal
20 affairs matter and when it's not?

21 A. **It depends on the circumstances of the
22 complaint. They will normally be reviewed by the
23 supervisor, bureau commander. They may very well
24 be held at the supervisory level. It depends, like
25 I said, on the circumstances of the event. If**

1 someone complains because their son was talked to
2 roughly by the officer, a supervisor will generally
3 talk to that complainant, and nine times out of ten
4 those are resolved over the phone. If it's more
5 serious matters then we do what we call an inquiry
6 to determine as many facts as we can based on the
7 information we have at that time. They will bring
8 it to me. I will review the circumstances and then
9 I will determine if it goes to an IA, if I'm going
10 to direct that an IA be conducted.

11 Q. Is an inquiry always a first step to an
12 IA?

13 A. Yes.

14 Q. Do I understand correctly that not all
15 citizen complaints result in an inquiry?

16 A. That's true.

17 Q. And the decision about whether a citizen
18 complaint results in an inquiry is made lower in
19 the chain of command, perhaps at the sergeant or
20 lieutenant's level?

21 A. Yes, sir.

22 Q. Is there a written protocol governing
23 when a citizen complaint will be treated as an
24 inquiry as opposed to not?

25 A. No.

1 Q. If a citizen complaint is not treated as
2 an inquiry, does the sheriff get informed of that
3 complaint?

4 A. Generally not.

5 Q. Is there a record made when there is a
6 inquiry?

7 A. No.

8 Q. When you said you do an inquiry, you
9 described some investigation?

10 A. Yes.

11 Q. Is that reduced to writing?

12 A. Sometimes it may be, sometimes it may
13 not. There again, it depends on the circumstances.
14 Generally, a supervisor who inquires into a
15 circumstance may very well reduce that to writing
16 and submit that to the bureau commander who then
17 generally would discuss it with me.

18 Q. But there's no requirement that it come
19 up the chain of command to the sheriff, correct?

20 A. No.

21 Q. That is correct or not correct?

22 A. That is correct.

23 Q. I take it then since there's no record
24 made of an inquiry routinely, if there is no
25 inquiry, is it accurate to say there's no record at

1 all of that?

2 A. Not necessarily. Some of these
3 supervisors may reduce it to writing and some may
4 not. It depends on what the nature of the
5 complaint was and other circumstances involved. It
6 may or may not be in writing. It's not required
7 that an inquiry be reduced to writing.

8 Q. This term, you said do an inquiry, is
9 that a specific term of art in your agency?

10 A. Yes.

11 Q. The definition of the term or the
12 protocol around doing the inquiry is not reduced to
13 writing anywhere, correct?

14 A. That's true.

15 Q. So that would be an example of something
16 that happened in your department based on a general
17 understanding or custom; is that accurate?

18 A. Yes.

19 Q. Does the general understanding or custom
20 around how inquiries are handled, is that with your
21 approval as the sheriff?

22 A. Yes.

23 Q. Is this a situation where you have
24 issued some sort of directive to those under your
25 command about how an inquiry will be handled or is

1 it a situation where inquiries have sort of been
2 handled this way and you approve of it after the
3 fact?

4 A. That's the way it's been done
5 traditionally for several years, and I've discussed
6 it with our commanders. I have four bureau
7 commanders and yes, it is with my approval.

8 Q. As opposed to with you initiating it?

9 A. Yes.

10 Q. The four bureau commanders, sir, who are
11 they?

12 A. Captain Todd, Captain Kaiser, Captain
13 Hudson, Captain Simcox.

14 Q. Have they been your bureau commanders
15 the entire time you have been the sheriff?

16 A. Yes, sir.

17 Q. I should say the last time you were the
18 sheriff.

19 A. This time, yes.

20 Q. Do you have a major?

21 A. No, I don't.

22 Q. Was Captain Todd a major at one time?

23 A. At one time.

24 Q. Why is he now a Captain?

25 A. We changed sheriffs and we changed

1 **procedures, and the previous sheriff deemed he**
 2 **needed a major, as sheriff I deem I don't need a**
 3 **major.**

Q. Administrative decision?

A. **Yes, sir.**

Q. As opposed to performance related or
 disciplinary?

A. **Yes.**

Q. Would your change, the change you
 described where you didn't want a major but you
 wanted four captains,

A. **Yes, sir.**

Q. -- would that be an example of a policy
 change that the sheriff has sole decision making
 authority over?

A. **No, sir.**

Q. What -- why is that not accurate?

A. **Any change in the personnel**
administration has, in most cases has to be
approved by the county council. If you are going
to change your FTE, your full time equivalency, it
has to be approved by the county council. If I
wanted to eliminate a captain and create a major, I
can't do that. I don't have the authority to do
that. That has to be approved by the county

1 **council.**

Q. The approval by the council, is it
 accurate to say that that is approval of the
 budgetary aspect of that decision?

A. **No.**

Q. All right. What is it approval of?

A. **The change of personnel and the movement**
of personnel within the department. If I wanted to
eliminate three sergeants and make two lieutenants,
if the money is the same, I still have to get
approval from the county council to do that.

Q. Have you ever had an occasion where you
 have asked for approval to make a change internally
 in the department that you were denied?

A. **No.**

Q. We've talked around the chain of command
 and other aspects of your job as the sheriff of
 St. Charles County where you have had to interact
 with the county and you just described one where
 you said you need approval to make a particular
 kind of change, correct?

A. **Correct.**

Q. Are there any others, sir? Any other
 instances where you have to get county approval
 before you can implement a change?

1 A. **To hire and fire.**

Q. Let's take a situation where you have an
 authorized strength of a hundred deputies, a
 hundred sworn personnel.

A. **Yes, sir.**

Q. And the hundredth individual retires or
 quits.

A. **Yes, sir.**

Q. So now you've got a billet that is
 vacant; is that accurate?

A. **Yes.**

Q. When you seek to fill that spot, are you
 saying you have to get approval to hire a new
 deputy?

A. **Yes.**

Q. And similarly, if you seek to terminate
 the employment of a deputy, do you have to get
 approval for that?

A. **Yes.**

Q. Have you ever been denied a request to
 hire a deputy?

A. **No.**

Q. Have you ever been denied a request to
 terminate the employment of a member of your
 department?

1 A. **Yes.**

Q. How many times has that occurred?

A. **Once.**

Q. When did that occur?

A. **Probably 2000-- well, I need to rephrase**
that. I was not sheriff at that time.

Q. I see. You have some information, some
 awareness of a request to terminate someone?

A. **Yes.**

Q. That was denied?

A. **Yes.**

Q. That would have been what year, sir?

A. **Probably 2000 -- can I ask the counselor**
a question?

(OFF THE RECORD DISCUSSION)

QUESTIONS BY MR. RYALS:

A. **My estimate, around 2002.**

Q. At that time you were captain in the
 department?

A. **Yes, I was.**

Q. Did you have a role in the decision
 making to attempt to terminate this employee?

A. **Yes.**

Q. A recommending role?

A. **Yes.**

1 Q. Is this employee still a member of the
2 sheriff's department?

3 A. No.

4 Q. Do you know why this employee is no
5 longer a member?

6 A. He resigned.

7 Q. Without telling me the name of the
8 individual, what were the circumstances around the
9 effort to terminate that individual's employment?

10 A. **There had been some disciplinary issues**
11 **with the individual and we had a complaint come in**
12 **in reference to another complaint come in, and**
13 **through progressive discipline, the department**
14 **realized that there wasn't going to be any**
15 **improvement in the individual, so there was some**
16 **allegations of misconduct on the part of the**
17 **officer, so the sheriff at that time decided to**
18 **terminate him and it went through the process.**

19 MS. TEMPLE: Tell him what process.

20 A. **It went through our disciplinary review**
21 **process and the recommendation to terminate was**
22 **upheld at our level, pre-disciplinary review. It**
23 **went to the Merit Commission hearing and the Merit**
24 **Commission determined that the individual should be**
25 **retained with a severe disciplinary action.**

1 Q. Is the Merit Commission a body of the
2 St. Charles County government?

3 A. **The Merit Commission is a body under**
4 **which all employees work based on the guidelines**
5 **established by the Merit Commission.**

6 Q. That is, the Merit Commission is not an
7 arm of the sheriff's department, correct?

8 A. No, sir.

9 Q. It's an arm of the county government?

10 A. Yes, sir.

11 Q. Is it accurate to say, as far as you
12 know, the Merit Commission exists to review
13 termination decisions for any county employee?

14 A. **Yes, in addition to establishing work**
15 **conditions, etc., etc.**

16 Q. Again, without -- I don't care about
17 great detail and I certainly don't want to know the
18 name of the individual, but what were the -- what
19 was the substance of the allegations against this
20 individual?

21 A. **Excessive force.**

22 Q. Do you know the circumstances of the
23 resignation of this individual?

24 A. No, sir.

25 Q. When did this individual resign?

1 A. **Two days after he was reinstated.**

2 Q. When a sworn member of law enforcement
3 community comes to work for an agency like St.
4 Charles County Sheriff's Department, the department
5 is required to report to POST; is that correct?

6 A. Yes.

7 Q. POST is an acronym for Peace Officer
8 Standards and Training?

9 A. Yes.

10 Q. That's a state agency that keeps track
11 of the employment at least of all peace officers in
12 the state of Missouri, correct?

13 A. Yes, sir.

14 Q. When a sworn member separates from a
15 department, the department is required to report
16 that to POST?

17 A. Yes, sir.

18 Q. Now with regard to the individual we've
19 been discussing who the Merit Commission decided
20 not to terminate,

21 A. Yes.

22 Q. -- did the department send any sort of
23 information to POST about that individual's
24 qualification to be a police officer?

25 A. **I have no idea, sir.**

1 Q. During your entire tenure this time,
2 have you always had four bureau commanders at the
3 captain level?

4 A. Yes, sir.

5 Q. That was the change you made when you
6 came in?

7 A. Yes, sir.

8 Q. Did you make it before or after you got
9 elected?

10 A. After.

11 Q. Briefly please describe the job
12 responsibilities of each of the bureau commanders.

13 A. **Bureau field operations commander is**
14 **responsible for the hours of the operations of the**
15 **field operations, deputies and communications or**
16 **the dispatchers.**

17 Q. May I interrupt you, sir?

18 A. Sure.

19 MR. RYALS: Why don't we mark this.
20 (PLAINTIFF'S EXHIBIT NO. 6 WAS MARKED
21 FOR IDENTIFICATION)

22 QUESTIONS BY MR. RYALS:

23 Q. You have a copy of Exhibit 6 in front of
24 you, correct?

25 A. Yes.

1 Q. And I asked the responsibilities of the
2 four bureau commanders, and it appears this is a
3 table of organization for the sheriff's department?

A. **Yes, sir, it is.**

Q. Dated January 28th of '13, correct?

A. **Yes, sir.**

Q. Is this the table of organization that's
been in effect since you were the sheriff?

A. **Yes, sir, it is.**

Q. There's handwriting next to the boxes,
the four boxes immediately below the sheriff,
correct?

A. **Yes, sir.**

Q. And it says captain, captain, captain,
captain?

A. **Yes, sir.**

Q. So if we look at this table of
organization, we can see what responsibilities each
bureau commander has under them, correct?

A. **Yes, sir.**

Q. Which bureau does Captain Todd have
charge of?

A. **Bureau of special enforcement.**

Q. I don't want to -- without your
permission I don't want to mark on a marked

exhibit, but if I put the name Todd after that?

A. **Sure.**

Q. I'll have you review it to make sure
it's accurate. Bureau of special enforcement is
Todd. How about Captain Kaiser?

A. **Captain Kaiser is bureau of field
operations.**

Q. That's K-A-I-S-E-R?

A. **Yes, sir.**

Q. Hudson?

A. **Bureau of administration.**

Q. And Simcox is criminal investigation?

A. **Yes, sir.**

Q. Under the bureau of field operations, it
appears that you have a patrol division and
communication, correct?

A. **Yes, sir.**

Q. And it looks like your department is
organized in the patrol division around three
shifts?

A. **Yes, sir.**

Q. And how does the communications side of
bureau of field operations differ from the patrol
division?

A. **I don't understand your question, sir.**

Q. Well, under the communications
subheading, you have three shifts as well?

A. **Yes, sir.**

Q. Are those all dispatchers?

A. **Yes, sir.**

Q. Under the patrol division side, how many
deputies, that is patrol deputies, are assigned to
each shift?

A. **It varies. Right now, under the current
shift assignments there is -- do you mind if I go
to my notes?**

Q. No, No. Please.

A. **Day shift has 23, evening shift has 28,
midnight shift has 23.**

Q. Given those numbers, how many deputies
would be on duty at any given shift?

A. **On days anywhere from 10 to 13, on
evenings anywhere from 12 to 15. The highest
number can vary. The low number is minimum
manpower, it wouldn't vary. Midnight shift
anywhere from 9 to 13, and on occasion they would
have as many as 23.**

Q. Mr. King testified about a power shift,
are you familiar with that term?

A. **Yes, sir. I noticed an error on the**

organizational chart.

Q. All right. Please point it out.

A. **Under communications there is no
sergeant on shift one and shift two and shift
three. Those are supervised by lead dispatchers.**

Q. I see. Are the communications people
sworn members?

A. **No, sir. The division commander only.**

Q. That would be a lieutenant?

A. **Yes, sir.**

Q. And it appears that at the level
immediately below the bureau of commanders you have
the patrol division, but then you have other
functions that are not called divisions, correct?

A. **Yes. They may be sections.**

Q. Back to the question about the power
shift.

A. **Okay. Power shift or fourth shift, that
is a shift that's been used periodically. We first
started using it in the middle '90s, I believe, and
we used it for four or five years, and then we
reinstated it probably around 2006, somewhere in
that area. It may have been before that, but then
we are back to three shifts now. The power shift
or fourth shift was just a shift that was**

1 designated to pick up the late evening and early
2 midnight manpower. You try to set up your
3 workforce where your workload is. Highest call
4 load between 7:00 in the evening and 2:00 to 3:00
5 in the morning. So with that fourth shift there
6 was additional layover personnel, shall we say,
7 between evening shift and midnight shift.

8 Q. Were those on the power shift assigned
9 to a particular geographic patrol area?

10 A. Yes.

11 Q. So there would just be another car in
12 specific zones?

13 A. Just another shift.

14 Q. In addition to second and third shift?

15 A. Yes.

16 Q. Then you have specific officers who are
17 K-9 officers?

18 A. Yes, sir.

19 Q. What's the manpower there?

20 A. I've got five now. They are worked into
21 the regular shifts.

22 Q. They actually, even though they are set
23 -- the box on the organizational chart is that they
24 work regular shifts?

-- A. Yes.

1 Q. Is the bureau of criminal investigations
2 what would commonly be called detectives?

3 A. Yes.

4 Q. The bureau of administration has under
5 it civil process, correct?

6 A. Yes.

7 Q. And those are deputies who go out and
8 serve process for the courts?

9 A. Yes, sir.

10 Q. Are they sworn members?

11 A. Yes, they are.

12 Q. Do they do that work full time?

13 A. Yes, they do.

14 Q. And then what is records?

15 A. Records is just that. They maintain all
16 of the records, they issue the CCW permits, they
17 prepare the UCR report, they file all of the police
18 reports. I'm sure they do a lot more and I'm
19 embarrassed because they would hate me if I didn't
20 tell everything they did.

Q. Maybe you will remember something else,
22 you can add it later if you want. Is it accurate
23 that professional standards, is that referred to as
24 internal affairs?

25 A. Yes.

1 Q. Is there any other aspect of
2 professional standards other than internal affairs?

3 A. Yes. Mobile data terminal program comes
4 under professional standards.

5 Q. Mold data?

6 A. Mobile.

7 Q. Mobile. I beg your pardon.

8 A. Police car computers. Yes. IA mobile
9 data terminals, and to be quite honest, any other
10 issues that may come up that need attention that
11 isn't directly assigned to somebody else.

12 Q. For example?

13 A. Well, they also -- let me include in
14 that policy and procedures, background
15 investigations pretty well consists of professional
16 standards, IA, mobile data, backgrounds.

17 Q. The professional standard, would you
18 call that a division?

19 A. That's a section under administrative
20 services.

21 Q. Is commanded by a lieutenant; is that
22 right?

23 A. He is a lieutenant. He answers to the
24 captain.

25 Q. Who is the lieutenant in professional

1 standards?

2 A. Kevin Broom.

3 Q. Has he been the lieutenant in
4 professional standards the entire time you have
5 been the sheriff?

6 A. No.

7 Q. Who preceded him?

8 A. My wife.

9 Q. Her name?

10 A. Peggy.

11 Q. And before Peggy?

12 A. I'm trying to think if we had
13 professional standards before. I believe Sheriff
14 Swope created that position.

15 Q. The table -- I'm glad you said that.
16 The table of organization that's reflected by
17 Exhibit 6, was this in effect when you became the
18 sheriff the last time?

19 A. It's close. Prisoner transport -- I'm
20 sorry, fugitive unit, when I took over was under
21 criminal investigations. That was moved to bureau
22 of special enforcement. K-9 was under bureau of
23 special enforcement at the time I took office. I
24 moved that shortly after over to bureau of field
25 operations. But overall, this is the

1 **organizational chart.**

2 Q. That existed when you took office?

3 A. **Yes.**

Q. Was your wife the head of professional standards when you became the sheriff or after you became the sheriff?

7 A. **When I became sheriff.**

8 Q. She already had that position?

9 A. **Yes.**

10 Q. Is it accurate to say you were in her chain of command?

12 A. **I was in her chain of command?**

13 Q. Yes.

14 A. **Not at work.**

15 Q. Well, she would report to the bureau chief, correct, Captain Hudson?

17 A. **Let me back up a little bit. When I was appointed she was in professional standards.**

19 Q. Right.

20 A. **Okay. Once I was appointed, then she answered to Captain Hudson who I appointed to the bureau of administrative services.**

23 Q. Right.

24 A. **Yeah.**

-- Q. The chain of command goes above her

1 immediate report though, correct?

2 A. **Yes.**

3 Q. And you were above her in the chain of command?

5 A. **Yes.**

6 Q. I'm sorry to refer to her as Peggy, was she a lieutenant? I want to give her her rank.

8 A. **Yes.**

9 Q. Lieutenant Neer, is she still a member of the department?

11 A. **No.**

12 Q. Did her separation have anything to do with the fact that you were the sheriff?

14 A. **Personally or legally?**

15 Q. At any level.

16 A. **She chose to retire after 31 years with the department shortly after I was appointed sheriff.**

19 Q. Was her decision to retire something that you communicated with her about at the professional level?

22 A. **No, sir.**

23 Q. Did you perceive any problem with your wife serving in the department that you ran?

25 A. **I was uncomfortable with it.**

1 Q. What's the total strength of the

2 St. Charles County Sheriff's Department, sworn members?

4 A. **164 sworn.**

5 Q. Including you?

6 A. **Yes, sir.**

7 Q. Is that the full authorized strength or is that your present census?

9 A. **That's full authorized strength.**

10 Q. Are you fully staffed?

11 A. **No.**

12 Q. What's your present --

13 A. **I'm short two dispatchers and one records clerk and one bailiff, and those will be filled prior to the end of August.**

16 Q. Is the bailiff a sworn member?

17 A. **Yes.**

18 Q. So aside from the bailiff, you are fully staffed as far as sworn members?

20 A. **Yes.**

21 Q. Over your tenure as the sheriff, has that generally been the case, you've been fully staffed?

24 A. **No. Oh, as sheriff?**

25 Q. Yes.

1 A. **No. No.**

2 Q. What's the rate of turnover for sworn members in your department?

4 A. **An average would be three percent or less.**

6 Q. Annually?

7 A. **Yes.**

8 Q. That sounds pretty good.

9 A. **Some years there's none, some years there's one to three percent.**

11 Q. Is that all separations, voluntary and involuntary?

13 A. **Yes.**

14 Q. If one wanted to examine all of the records of complaints -- strike that.

16 If one wanted to examine all of the records of internal affairs complaints, how would one access that information?

19 A. **Through the courts.**

20 Q. The courts have all internal affairs complaints in their records?

22 A. **No. I'm sorry. I misunderstood your question. Where do we house them?**

24 Q. Right.

25 A. **Our department, personnel section.**

1 Q. And they keep track of all complaints?

2 A. **Yes. I'm sorry, all internal affairs.**

3 Q. How is that data kept? Are they
individual files or do you keep some sort of record
that perhaps is accessible by computer?

6 A. **No, individual files.**

7 Q. That would be all internal affairs
8 complaints sustained or not sustained, correct?

9 A. **Yes.**

10 Q. If an internal affairs complaint
11 resulted in -- if it was sustained, then we would
12 find it, at least for the time period here on
13 Exhibit 2?

14 A. **Yes.**

15 Q. And there is no accumulation of data for
16 not sustaining?

17 A. **No. Let me rephrase that. On the IA,
18 the nonsustained would be on file. Did you mean
19 the IAs or all complaints?**

20 Q. I'm just talking about IAs.

21 A. **IAs, yes. If they're not sustained
22 they're still on file.**

23 Q. Those are in individual files as opposed
24 to accumulated and created where you would create
25 statistics?

1 A. **They're separate and apart from anything
2 else.**

3 Q. Single files?

4 A. **Yes.**

5 Q. I'm familiar with, and perhaps you are
6 as well, another agency, St. Louis Metropolitan
7 Police Department. Every year they publish
8 statistics and you get a list of all complaints and
9 then their disposition, sustained, not sustained,
10 exonerated, unfounded. And the complaints are
11 broken down by categories that they've come up with
12 and those are published to the public.

13 A. **Uh-huh.**

14 Q. Does your department accumulate or
15 gather the statistics of complaints and their
16 dispositions?

17 A. **On this spreadsheet.**

18 Q. Exhibit 6?

19 A. **Yes, sir.**

20 Q. Now, the example I'm giving you from the
city, they will also include complaints that were
22 not sustained. Does your department gather that
23 data?

24 A. **No. We don't gather that data
25 specifically. If we have formal complaints from**

1 **citizens come in and they are unsustained, those
2 are on file. But as far as every single complaint
3 that comes into the department, do we publish and
4 categorize what those complaints are, no.**

5 Q. Do you publish and categorize what the
6 -- strike that.

7 The formal complaints of citizens are?

8 A. **No, we don't publish those.**

9 Q. Do you keep them though? Do you gather
10 them?

11 A. **The formal complaints, yes.**

12 Q. Would they be in a spreadsheet similar
13 to Exhibit 2?

14 A. **If they were sustained.**

15 Q. And if they're not?

16 A. **They wouldn't be on this sheet.**

17 Q. Not Exhibit 2, but like Exhibit 2, in
18 this format?

19 A. **They would not be in that format, no.**

20 Q. What format would they be in?

21 A. **They would be in the individual
22 officer's file.**

23 Q. Is there a separate file kept for formal
24 complaints regarding each officer?

25 A. **If there's a formal complaint against a**

1 **specific officer, that complaint would go, unless
2 it's an IA, would go in his or her personnel file.**

3 Q. And the example of an IA complaint
4 against an officer, are all IA complaints against a
5 given officer kept in a single file?

6 A. **Yes.**

7 MR. RYALS: You're looking at your
8 watch, is it time for a break?

9 MS. TEMPLE: No, I'm just looking.

10 QUESTIONS BY MR. RYALS:

11 Q. Would you like a break?

12 A. **(Witness indicated no).**

13 Q. As a manager or administrator of a
14 police agency, do you, either yourself or at your
15 direction utilize the information that would be
16 contained in an officer's complaint file in any
17 respect relative to that officer?

18 A. **I think I understand your question. If
19 there's information about an officer's behavior and
20 that officer applies for a promotion or specialized
21 unit or something like this, that information would
22 be used along with several other categories with
23 that officer.**

24 Q. Take a hypothetical, officer applying to
25 become a member of the fugitive squad or something,

1 that officer has four not-sustained internal
2 affairs complaints, your testimony is that those
3 four not-sustained complaints would be considered
in the context of whether that officer might get
that assignment?

6 **A. That would not be the determining
7 factor. That would be weighed in with the other
8 criteria for that promotion assignment or -- and
9 these issues would also be considered for the
10 officer's individual evaluations.**

11 **Q.** All right. So not-sustained complaints
12 do have some value going forward relative to that
13 particular officer?

14 **A. They have some value. They are not
15 ignored.**

16 **Q.** How about if an officer, let's focus on
17 the specific context of a subsequent complaint,
18 same hypothetical officer has four not-sustained
19 complaints in their file and receives a fifth, does
20 the four not-sustained complaints have any bearing
21 on what happens in the fifth?

22 **A. If they are not sustained, no, but you
23 certainly have to take them into consideration.**

24 **Q.** How would you take them into
25 consideration? I mean, if you said they are not

1 sustained, no, how would you take them into
2 consideration?

3 **A. Just the fact that they are there. Yes,
4 they are sustained so as far as any official
5 action, you have to consider they weren't
6 sustained. In other words, well, unsustained or
7 exonerated, you would have to take that into
8 consideration. You may have a situation where
9 there's a complaint against the officer, it's not
10 sustained because you could have several things
11 like lack of cooperation by the complainant. If
12 you can't obtain the information that you need to
13 make a decision, to sustain what this complaint is,
14 then it's unsustained. It doesn't mean it's
15 unfounded. It doesn't mean they're exonerated. It
16 means you were unable to sustain it. So if you've
17 got four unsustains, a light bulb is going to go
18 off.**

19 **Q.** What does that mean, a light bulb is
20 going to go off?

21 **A. It means you will be considering those
22 issues when you are dealing with the issue at hand.
23 Would you base a decision on it, not necessarily,
24 but you can't totally ignore it.**

25 **Q.** I take it you have had some

1 indoctrination, training, exposure to the
2 importance of the internal affairs function in the
3 police agency?

4 **A. Yes, sir.**

5 **Q.** You went to the national academy, the
6 FBI National Academy?

7 **A. I've taken three courses in internal
8 affairs investigations myself.**

9 **Q.** Right. And as a commander and chief of
10 a 150 plus person law enforcement agency, would you
11 agree with the proposition that an effective
12 internal affairs function is important for that
13 organization?

14 **A. Oh, certainly.**

15 **Q.** Are you able to articulate why it's
16 important?

17 **A. Well, there's several reasons. Number
18 one, that guides the integrity of the agency to
19 begin with. Number two, it is directly involved
20 with the operations of the department, the
21 responsibilities to the public, and the
22 responsibilities to either the county or the city
23 depending on what kind of entity it is. The
24 internal affairs function pretty well is the
25 internal court for any law enforcement agency.**

1 **Q.** What is the risk to the agency -- strike
2 that.

3 What is the risk in general if the
4 internal affairs function does not operate
5 effectively?

6 **A. Lack of trust, not only among the
7 employees but lack of trust from the general
8 public, lack of trust from those you are
9 responsible to. In case of a city police
10 department or be it the city council or mayor or
11 the city administrator, whomever. In our
12 particular situation, the trust of the people that
13 we serve.**

14 **Q.** I've seen verbiage to the effect that
15 lax discipline, L-A-X discipline, fosters
16 misconduct. Do you agree with that?

17 **A. Yes, I agree with that.**

18 **Q.** Is it important for your sworn members
19 to understand that if they engage in misconduct
20 they will be held accountable by the command staff?

21 **A. Yes.**

22 **Q.** Is it important for the members to
23 understand that if they engage in discipline --
24 strike that, that entire question.

25 Is it important for the members to

1 understand that the disciplinary system is
2 administered fairly and equally among all the
3 members?

A. **As much as possible, yes.**

Q. I take it that that's a morale issue as
6 well, correct?

A. **It can be, yes.**

Q. Now, did you read any part of Mr. King's
9 testimony where he described a difference in how
10 some members were treated as opposed to others?

A. **Yes, I did.**

Q. Is that -- is his account an accurate
13 account of the way the disciplinary system has
14 worked in your department?

A. **No, it's not.**

Q. If you take as true his accounts, and I
17 understand you are not, you disagree with the way
18 he's described the way the disciplinary system
19 operates, right?

A. **I totally object to it, yes.**

Q. I want to be clear. I am not trying to
22 suggest that you agree with it, but if you take his
23 account as true, would you agree that that is an
24 inappropriate way for the disciplinary system to
-- operate in your department, if you accept as true

1 what he has said?

A. **If I accepted what he said, it would not
3 be proper.**

Q. Would you characterize his description
5 as unequal applications of the rules?

A. **I would describe his description as not
7 knowing a whole heck of a lot about what he was
8 talking about in those individual incidents that he
9 describes.**

Q. I understand. But again, if he's
11 accurate, if he's telling the truth and it's
12 accurate, would you agree that he's described
13 unequal application of the rules?

A. **That's what he described, but as stated
15 before, it is totally false.**

Q. You can say that as many times as you
17 want.

A. **You can ask me that as many times as you
19 want.**

Q. I'm not trying to trick you into saying
22 it's true. If you take his accounts as true, would
23 you agree that he has described, at least for part
of the department, lax discipline?

A. **Once again, if I assumed what he said
25 was true, yes.**

Q. Now, with your permission, I'd like to
2 take a break, is that acceptable?

A. **Sure.**

(OFF THE RECORD DISCUSSION)

QUESTIONS BY MR. RYALS:

Q. Did you have any role in helping
7 Christopher Hunt post an appeal bond?

MS. TEMPLE: I object. It's irrelevant
9 to this preceding. Subject to that, you can answer
10 if you want to.

THE WITNESS: I don't understand the
12 question.

QUESTIONS BY MR. RYALS:

Q. Did you post an appeal bond for
15 Christopher Hunt?

A. **No, I did not.**

Q. Did you assist him in arranging for the
18 appeal bond?

A. **No.**

Q. Had no role in it whatsoever?

A. **I loaned his family some money.**

Q. The total amount of the bond, sir?

A. **I believe it was 10,000.**

Q. I take it that there's no part of that
25 event that would violate your department's

1 policies, correct?

A. **No, absolutely not.**

Q. Is there any guidance for the sheriff,
4 sir, as to when an internal affairs investigation
5 is ordered versus not being ordered, or is that the
6 sheriff's --

A. **That's the sheriff's discretion by
8 policy.**

Q. If you look at Exhibit 2, do you have a
10 copy of that?

A. **I did somewhere.**

MS. TEMPLE: Here you go.

QUESTIONS BY MR. RYALS:

Q. After the name of the individual in the
15 horizontal column, there is a vertical column
16 labeled type?

A. **Yes.**

Q. What I see are entries that are either a
19 C, an R, or a blank. Do you know what the C means?

A. **C is a counseling form.**

Q. And R?

A. **Reprimand.**

Q. So when you see these various -- or
24 these designated C or R, what does that tell you
25 about what occurred in a given instance?

1 A. Very little, other than the fact that
2 the individual was issued a supervisory incident
3 form, and depending on what the violation was, the
4 discipline was determined to be either counseling
5 or reprimand.

6 Q. Maybe we can --

7 A. And --

8 Q. I'm sorry?

9 A. I'm trying to remember the question you
10 asked. How would I know by what the designation
11 is?

12 Q. What does it tell you, if anything?

13 A. Well, if it's counseling form, it's, I
14 don't want to say a minor nature, but not a serious
15 nature violation. If it's a reprimand, the chances
16 are most likely that that individual has had
17 counseling forms in the past, so the reprimand is
18 our form of progressive discipline. And when you
19 get down into the terminations, although there are
20 a few single acts that result in termination,
21 approval means that that individual has had several
22 disciplinary incidents.

23 Q. Now what I'm going to hand you is what
24 I've marked as Exhibit 5. And if you will quickly
25 identify this as a number of different documents,

1 and it appears to me that these all pertain to
2 Jason King. Take a look.

3 A. Are these in date order by any chance?

4 Q. I'm not going to represent to you they
5 are or aren't. I'm sorry. You can take the
6 paperclip off if it's easier.

7 So is Exhibit 5 a series of documents
8 pertaining to Jason King?

9 A. Yes, sir.

10 Q. Is each stapled document within
11 Exhibit 5 the same form over and over again?

12 A. Yes, sir.

13 Q. And what would you call this form?

14 A. Supervisory incident form.

15 Q. Tell me when one of these is prepared.

16 A. When there is -- an incident occurs and
17 disciplinary action is determined, then generally
18 the shift supervisor will complete the supervisory
19 incident form and then submit it up the chain,
20 providing the information to the next senior
21 officer, and then eventually it gets to me.

22 Q. When it comes to you, the sheriff, is
23 that because there's been a recommendation for some
24 discipline?

25 A. Yes, sir.

1 Q. If there's a recommendation for no
2 discipline, would this form ever be prepared?

3 A. No.

4 Q. When you receive supervisor incident
5 forms, is one of the determinations that you are
6 going to make whether discipline should be meted
7 out or not?

8 A. Yes. If the recommended discipline
9 meets the violations.

10 Q. Is another decision that you have to
11 make or could make, is a better way to ask it, to
12 commence an internal affairs investigation?

13 A. The information of anything of a serious
14 enough nature that would require an internal
15 affairs investigation comes generally before that.

16 Q. On the inquiry form?

17 A. Yes.

18 Q. All right. So is it accurate to say
19 that the supervisor incident form is utilized for,
20 not to minimize the gravity of any given event in
21 this exhibit, but more minor types of
22 transgressions?

23 A. For the most part, yes. The counseling
24 where it's indicated, the counseling or reprimand,
25 it's to inform the individual that we are aware of

1 the circumstance, the situation, the corrective
2 action that we are trying to gain from the employee
3 by documenting certain events that have happened.

4 Q. And in Exhibit 2, there are a large
5 number of counselings reflected in that exhibit.

6 A. Yes.

7 Q. What exactly is a counseling in your
8 department?

9 A. The written counseling is a formal
10 record or document that the negative behavior or
11 actions of the employee have been discussed with
12 the employee by the supervisor and that it is going
13 to be a part of the record.

14 Q. Is that the same as a written reprimand?

15 A. Written reprimand is the next
16 progressive step in addressing the violations of
17 the employees.

18 Q. Does Exhibit 5 reflect written
19 counseling?

20 A. Some of it, yes. I believe there is
21 some written counseling and some reprimand.

22 Q. But in any event if there was a
23 non-written reprimand, I guess by definition you
24 wouldn't have a record that that occurred?

25 A. No. If there was a conversation between

1 a supervisor and a subordinate about he needs to
2 pick it up a little bit or, you know, your car
3 looks like you have been sleeping it in for the
4 last three days or something like that, that would
5 not be documented on a supervisor incident form.

6 Q. Would it be documented anywhere?

7 A. **No. Third time you had to tell him it
8 would be.**

9 Q. Exhibit 3, sir?

10 A. **Yes, sir.**

11 Q. I'm going to take a guess, but is
12 Exhibit 3 just a record of the individual documents
13 in Exhibit 5?

14 A. **Yes, sir. A synopsis of the supervisor
15 incident form.**

16 Q. In Exhibit 2, if you look at the fifth
17 page in, quarter of the way up, 1/11/08, Jason
18 King, do you see that?

19 A. **Page five, oh, from the bottom up. Yes.**

20 Q. This reflects, first of all, under type
21 the box is blank, would you expect the box to be
22 blank given the circumstances --

23 A. **Yes.**

24 Q. -- of this record?

25 A. **Yes.**

1 Q. In this case, Deputy King received
2 neither a counseling or a reprimand, correct?

3 A. **I believe his supervisor incident form
4 indicates reprimand with recommended disciplinary
5 termination. You won't find that in there.**

6 Q. I just picked up Exhibit 5, you said I
7 won't find that in Exhibit 5, right?

8 A. **On the supervisor incident form?**

9 Q. Yes.

10 A. **For this incident?**

11 Q. Yes.

12 A. **No.**

13 Q. Where is it?

14 A. **In the internal affairs file.**

15 Q. Do we have that?

16 A. **No.**

17 Q. Why not?

18 A. **It's an internal affairs file, and by
19 department policy and our county personnel policy,
20 IA files are not available to the general public,
21 or to anyone other than the sheriff and IA and the
22 investigator.**

23 Q. So what we have here is under incident
24 disciplinary action, correct?

25 A. **Yes.**

1 Q. What does that mean?

2 A. **That means he was terminated because of
3 disciplinary action. Or he resigned -- he was
4 under disciplinary -- he was under investigation
5 and his fate was to be determined when he resigned.**

6 Q. You don't mean after he resigned. At
7 the time he resigned his fate was to be determined?

8 A. **This is a clerical error. That should
9 have been entered as resigned.**

10 Q. Whose handwriting is that?

11 A. **That's mine.**

12 Q. If you look up at the top, maybe a
13 quarter of the way down, right below Eric Schruder.

14 A. **Yes.**

15 Q. There appears to be a redaction, do you
16 agree?

17 A. **Yes.**

18 Q. Did you direct that redaction?

19 A. **No, I did not.**

20 Q. Do you know what information was
21 contained in that line?

22 A. **I have no idea what was in that line.
23 This is the first I've seen it.**

24 Q. Was Jason King's matter that's reflected
25 on Exhibit 2 -- strike that.

1 From your testimony I take it that Jason
2 King's matter reflected on Exhibit 2, this entry
3 reflects the result of an internal affairs action,
4 correct?

5 A. **Yes.**

6 Q. So you have provided information about
7 an internal affairs action, but you decline to
8 provide the actual internal affairs file?

9 A. **That's correct.**

10 Q. If we go through Exhibit 2, we can't
11 tell which of these were internal affairs actions
12 and which were something else, correct?

13 A. **That is correct.**

14 Q. If you went through each line, could you
15 tell me which are internal affairs and which
16 aren't?

17 A. **No.**

18 Q. Go to the second to the last page.
19 Again, a little more, maybe a quarter of the way
20 up, Richard Walker from 2/22/13.

21 A. **Yes.**

22 Q. Do you know Mr. Walker?

23 A. **Yes.**

24 Q. He was terminated, correct?

25 A. **Yes, he was.**

1 Q. For what?

2 A. **Several violations, lying to a**
3 **supervisor, lying, entering false information on**
4 **the mobile data terminal, sitting at home when he**
5 **was supposed be in his zone, a myriad of issues.**
6 **And this was progressive discipline based on prior**
7 **issues with Mr. Walker.**

8 Q. Preceding the event on 2/22 of '13, was
9 there an internal affairs investigation?

10 A. **No.**

11 Q. Or did that proceed, that proceeded in a
12 different route?

13 A. **Yes, it did.**

14 Q. With the inquiry?

15 A. **Yes, it was pretty well cut and dried.**

16 Q. Sir?

17 A. **It was pretty well cut and dried.**

18 Q. Now, when I look at Exhibit 2, I see a
19 number of vehicular issues?

20 A. **Yes.**

21 Q. Is that a pretty common issue in your
22 department?

23 A. **Yes, sir, it is.**

24 Q. Is it accurate to say when a deputy
25 dings a county sheriff's department vehicle, they

1 are probably going to get some form of disciplinary
2 action?

3 A. **Yes.**

4 Q. Is it accurate to say that's almost
5 automatic?

6 A. **Yes.**

7 Q. I'm just looking at the range of
8 descriptors, and if you look at page two, fourth
9 down, James Naughton.

10 A. **Yes.**

11 Q. He received a counseling for wearing
12 unauthorized head gear?

13 A. **Yes.**

14 Q. Do you know what that head gear was?

15 A. **It was a sock hat with some kind of**
16 **goofy insignia on the front that he had been warned**
17 **previously, verbally, not to wear it.**

18 Q. Okay.

19 A. **I believe it was Tasmanian devil or**
20 **something of that nature. It was detracting from**
21 **the professional uniform.**

22 Q. Not to minimize the offense, but that's
23 a relatively minor transgression, would you agree?

24 A. **First one maybe, not the second one.**

25 Q. Got you. But if you look at the top

1 entry on the second page, Keller, Brian?

2 A. **Yes.**

3 Q. Conduct unbecoming of a deputy, pointed
4 taser at estranged wife. Would you characterize
5 that as a little more serious?

6 A. **Yes. Therefore, that was a reprimand as**
7 **opposed to counseling form.**

8 Q. All right. And the reprimand does not
9 reflect any suspension or loss of pay, correct?

10 A. **It doesn't reflect it here, so I can**
11 **only assume there was no loss of pay or suspension**
12 **on that particular incident.**

13 Q. Well, if you look --

14 A. **However -- Excuse me. Go ahead.**

15 Q. I don't want to interrupt your train of
16 thought.

17 A. **No, I was done.**

18 Q. If you scroll down on 4/27/07, Warner,
19 Jeff.

20 A. **Yes.**

21 Q. He's charged with leaving work without
22 advice. I think it must be a typo. Must be
23 without advising supervisor and lied about his
24 reason.

25 A. **Yes.**

1 Q. And Warner comma Jeff got a reprimand
2 and a two-day suspension?

3 A. **Yes.**

4 Q. So if we see reprimand but no suspension
5 noted, is it fair to conclude that no suspension
6 followed the reprimand?

7 A. **It should be if all these entries are**
8 **indeed correct.**

9 Q. As you look at Exhibit 2, do you have
10 any reason to doubt the veracity or the accuracy of
11 the entries?

12 A. **Overall, no. I just -- there are a**
13 **couple entries on here where action taken is not**
14 **noted, for which I will determine why not, but**
15 **overall the accuracy of the document as a whole I**
16 **see is correct, yes.**

17 Q. I'm sorry, you are not hiding it, but I
18 see you have highlighted the copy you have in front
19 of you in certain places, Exhibit 2?

20 A. **Yes.**

21 Q. Did you highlight those items for
22 errors?

23 A. **No.**

24 Q. Why did you highlight them?

25 A. **They noted the terminations.**

- 1 Q. Let's talk about that, the terminations.
 2 On the second page, Wheelan, John dated 10/20/06?
 3 A. **Yes.**
 4 Q. Failed to successfully complete
 5 probation period, termination?
 6 A. **Yes, sir.**
 7 Q. Now, how long is a sworn member under
 8 probation when they come to your department?
 9 A. **One year.**
 10 Q. And during that year, they are purely an
 11 at-will employee; is that correct?
 12 A. **Yes.**
 13 Q. Can be terminated for any reason, no
 14 reason, great reasons, bad reasons, correct?
 15 A. **In theory, yes.**
 16 Q. All right. The one-year probation is
 17 designed, and I'm going to move this along. The
 18 one year probation is designed to permit
 19 supervisors and commanders to evaluate the
 20 performance of that probationary deputy, correct?
 21 A. **Yes, sir.**
 22 Q. And ultimately to decide whether that
 23 person performs up to the competence level expected
 24 of your officers, correct?
 25 A. **Yes.**

- 1 Q. So the termination after failing to
 2 successfully complete probation, does not
 3 necessarily reflect misconduct; is that accurate?
 4 A. **No, sir. That's correct.**
 5 Q. It could just be there's some deficiency
 6 and the decision is made, he's not for us?
 7 A. **Yes. And sometimes it's on their own**
 8 **volition to tell us before the end of the year.**
 9 Q. I see. Would that still reflect
 10 termination?
 11 A. **Yes. It's kind of harsh for those**
 12 **circumstances where they leave on their own**
 13 **volition, but we have to have a category, and**
 14 **that's what that category is.**
 15 Q. So as to those terminations for failing
 16 to complete probationary period, we really have no
 17 detail about whether the person resigned, whether
 18 they engaged in misconduct, whether they simply
 19 didn't measure up in some respects?
 20 A. **No, sir.**
 21 Q. If we could please, as to the
 22 terminations following disciplinary action, take a
 23 look at those. And the first one is Kerry Kamp,
 24 that's the one you already testified about,
 25 correct, or did you?

- 1 A. **No.**
 2 Q. Do you know the circumstances of Kerry
 3 Camp's termination?
 4 A. **Yes.**
 5 Q. Please describe them.
 6 A. **He assaulted a young man in the back**
 7 **seat of his patrol car while the young man was**
 8 **handcuffed.**
 9 Q. First offense?
 10 A. **No.**
 11 Q. Do you recall --
 12 A. **First offense of that nature.**
 13 Q. Excessive force?
 14 A. **Yes.**
 15 Q. Was this a situation with Deputy Camp or
 16 Mr. Camp where he was disciplined on this occasion
 17 because it was -- he had worked his way up the
 18 ladder of progressive discipline, or would he have
 19 been terminated if this was the first time he did
 20 it, or can you say?
 21 A. **I can't say, that would be speculating.**
 22 **But he did have several prior incidents, recorded**
 23 **incidents, and this was the determination of the**
 24 **command staff.**
 25 Q. The prior incidents, were they

- 1 inquiries, counselings or internal affairs?
 2 A. **Off the top of my head, I don't recall**
 3 **an internal affairs prior to this. I would have to**
 4 **go back and look at the personnel file. There had**
 5 **been several incidents with Mr. Camp prior to this.**
 6 Q. Okay. How long was he on the force
 7 before he was terminated?
 8 A. **Probably four or five years, maybe**
 9 **longer. That was a long time ago.**
 10 Q. Correct me if I misstate, but the next
 11 termination for disciplinary action I see is
 12 12/23/09, Lindsey comma Matthew?
 13 A. **Matt Lindsey, yes.**
 14 Q. Is that the next one after?
 15 A. **Yes.**
 16 Q. And what caused Lindsey comma Matthew to
 17 get terminated?
 18 A. **He had had some prior incidents. This**
 19 **particular one through the progressive disciplinary**
 20 **action. His vehicle, during vehicle inspection,**
 21 **narcotics were found in the vehicle as well as**
 22 **alcohol.**
 23 Q. That was the event that resulted in him
 24 getting terminated?
 25 A. **Terminated, yes, sir.**

1 Q. Do you recall his prior problems?
 2 A. **Not specifically. I believe he had some**
 3 **report issues, abuse of sick leave, and I don't**
 4 **know. I've got 70 patrol officers, I can't recall**
 5 **each incident on each one.**

6 Q. I know.

7 A. **But I do know the reason for his**
 8 **termination was drugs and alcohol in the patrol**
 9 **car.**

10 Q. Was there an indication that either the
 11 drugs or the alcohol were personal use or were
 12 they, on the other hand, evidence?

13 A. **The alcohol was in a flask in his**
 14 **console, and the drugs were in a vial under a**
 15 **different person's name, also in his console under**
 16 **partial concealment.**

17 Q. In other words, they did not appear to
 18 be evidence that he had seized --

19 A. **No.**

20 Q. -- and just carried around?

21 A. **No.**

22 Q. On the next page there's an entry on
 23 4/13 of '10 for Mallett comma Chance?

24 A. **That's the one with a blank entry on**
 25 **action taken, isn't it?**

1 Q. Yes, sir.

2 A. **I recall seeing it before.**

3 Q. And the incident just says deputy.

4 A. **Yeah. I have no explanation for that at**
 5 **all. I wouldn't even want to speculate on that**
 6 **one.**

7 Q. Of course. I see it appears the next
 8 disciplinary action termination involves Walters
 9 comma Sarah on 11/2 of '10?

10 A. **Sarah Walters, she was a dispatcher.**

11 Q. Not a sworn officer?

12 A. **No.**

13 Q. I don't need to ask any more about her.
 14 She didn't use excessive force, did she?

15 A. **No.**

16 Q. Third from the last page, Sheriff.

17 Third line down, Roberts comma Patrick?

18 A. **Yes.**

19 Q. Uniform appearance?

20 A. **Yes.**

21 Q. And there's no action taken?

22 A. **No. I would speculate that's a**
 23 **counseling form. However, once again, clerical**
 24 **error why it's not entered in the first place.**

25 Q. Of course. I just noticed another mark

1 on some of these entries and, for example, the
 2 first entry on the third from the last page is Clay
 3 comma Brian, correct?

4 A. **Yes.**

5 Q. If you go over to the last column,
 6 there's an X.

7 A. **Yes.**

8 Q. Do you know what the X indicates?

9 A. **I have no idea.**

10 Q. Who would know the answer to that
 11 question?

12 A. **The personnel clerk who does all these**
 13 **entries.**

14 Q. That person's name?

15 A. **Phyllis Boyle.**

16 MS. TEMPLE: B-O-Y-L-E.

17 QUESTIONS BY MR. RYALS:

18 Q. I think you testified that clerk
 19 maintains this record on an ongoing basis?

20 A. **Yes.**

21 Q. Then if we could take a look at from
 22 6/8/12, Williams comma Rob?

23 A. **Yes.**

24 Q. He was terminated?

25 A. **Yes.**

1 Q. Why?

2 A. **He was on his way back from training**
 3 **session in St. Louis city in his marked patrol car**
 4 **and he was driving extremely intoxicated down I-70,**
 5 **which we received reports on, and had him**
 6 **intercepted at his residence and was terminated for**
 7 **those actions.**

8 Q. His name appears the second line above
 9 as well, code of ethics conduct unbecoming, same
 10 incident?

11 A. **Yes.**

12 Q. Second to the last page from 2/22/13?

13 A. **Yes.**

14 Q. Walker comma Richard?

15 A. **Yes.**

16 Q. Why did Richard Walker get terminated?

17 A. **He's the one that lied to the**
 18 **supervisor, and was trying to conduct his law**
 19 **business from his residence when he was supposed to**
 20 **be on patrol, made false entries into the mobile**
 21 **data terminal into the computer system.**

22 Q. The false entries were designed to make
 23 it look --

24 A. **Make everybody think he was working.**

25 Q. Right below him is James Logsdon?

1 A. Yes.

2 Q. Showed poor judgment using another
3 department's computer. Do you know what that is
about?

4 A. I believe he is assigned the Darden
5 Prairie contract frequently, and I believe he was
6 using one of the computers in the city hall there
7 and one of the clerks or Darden Prairie employees
8 issued a complaint.

9 Q. Sorry to jump around there, third from
10 the last page, Sheriff. On 4/27 of '12 Cochran
11 comma Jerry?

12 A. Yes.

13 Q. Your department has patrol rifles,
14 correct?

15 A. No.

16 Q. Do you know what happened in this
17 incident?

18 A. Well, the patrol personnel don't have
19 rifles assigned. The regional SWAT team members do
20 have rifles assigned. I don't remember this
21 specific incident. Any accidental discharge of a
22 weapon is taken seriously and like I say, I recall
23 this specific incident.

24 Q. Was Jerry Cochran a SWAT team member?

1 A. At that time, yes.

2 Q. The date range for Exhibit 2 is from
3 1/11/06 to almost current, May of this year.

4 A. Uh-huh.

5 Q. If we looked at a similar document going
6 back to the beginning of your tenure, would it
7 reflect basically the same information that
8 Exhibit 2 has? What I mean to say, what I mean to
9 ask you is, when you came on as the sheriff, were
10 there more terminations than starting in January of
11 '06?

12 A. To my recollection, probably not.

13 Q. You would, of course, recall if your
14 mindset was, I'm going to crack the whip or
15 whatever?

16 A. Most certainly.

17 Q. Had you sort of cleaned house or taken a
18 different approach than maybe your predecessor that
19 may have resulted in a different record of
20 disciplinary actions? So that's the purpose of my
question because we don't have a record beyond '06.
22 Do you think if we looked at the record going back
23 to when you became the sheriff, it looked roughly
24 the same as this?

25 A. My management style is I believe I hold

1 officers, supervisors more accountable than my
2 predecessors. And those supervisors are
3 instructed, and I meet with them periodically to
4 ensure that their subordinates are accountable. I
5 think I require more accountability than my
6 predecessors did, but within reason for sure.

7 Q. That response prompts two additional
8 questions. Separate questions.

9 Do you think there would be, given the
10 change from your predecessor, there would be
11 greater frequency of disciplinary actions when you
12 first came on as the sheriff?

13 A. It's been pretty steady since I was
14 appointed.

15 Q. Second question. Do you think when you
16 first came on, you would find more disciplinary
17 actions directed to supervisors than Exhibit 2
18 might reflect?

19 A. No, not necessarily.

20 Q. So in terms of the numbers and the types
21 of disciplinary matters, if we looked at the record
22 back to when you started as the sheriff, it would
23 look the same as Exhibit 2?

24 A. Pretty consistent, yes, sir.

25 Q. Now, this is Exhibit 4. Do you have a

1 copy of that before you, sir?

2 A. Yes, I do.

3 Q. Now, the title of this document is
4 internal affairs investigations, correct?

5 A. Yes, sir.

6 Q. Is this a document that's prepared as
7 part of the routine of the department or was it
8 prepared in response to a question we asked?

9 A. It was prepared in response to your
10 request, your inquiry.

11 Q. Do you know what information this is
12 responsive to or what question this was responsive
13 to?

14 A. A list of all internal affairs
15 investigations over the last six years, seven
16 years, something like that.

17 Q. It also has the disposition for each
18 internal affairs incident?

19 A. Yes, sir.

20 Q. Am I correct that if we took all of the
21 sustained incidents from Exhibit 4, we should be
22 able to match them with an entry in Exhibit 2?

23 A. One would assume so.

24 Q. Let's test it. I looked at the July, I
25 think this must be July 20, '11 as opposed to July

1 11, it says, improper computer usage, sustained,
2 correct? And I'm looking at Exhibit 4.
3 A. **Yes. Which form? You're on internal
affairs investigation form?**

4 Q. Yes, sir.

5 A. **May 11th?**

6 Q. July.

7 A. **July 11th, okay.**

8 Q. Improper computer usage, sustained?

9 A. **Uh-huh.**

10 Q. So if I look at Exhibit 2 I see two
11 entries from July of 2011, and they are found on
12 the fourth page from the back.

13 A. **Uh-huh.**

14 Q. Do you find those two entries, sir?

15 A. **I don't find them on the disciplinary
16 records.**

17 Q. No. Let's take it a step at a time. On
18 Exhibit 2, you find there are apparently only two
19 entries from July of '11, correct, 2011?

20 A. **Yes.**

21 Q. And neither of those entries reflect or
22 are consistent with the record in Exhibit 4,
23 improper computer usage?

24 A. **Yes.**

1 Q. You agree with that?

2 A. **I agree with that.**

3 Q. Is it possible that the entry from
4 Exhibit 4 was put someplace else maybe at a later
5 date or an earlier date on Exhibit 2?

6 A. **That's possible, yes. Obviously it's
7 not on this one.**

8 Q. Well, it's not on that date, but it
9 could have been -- the discipline could have
10 happened or been reflected on a different date, do
11 you think, or should it be reflected as of July of
12 2011?

13 A. **It should be reflected there. However,
14 there are other clerical errors on there so that
15 could very well be a clerical error.**

16 Q. All right.

17 A. **But I do not have an explanation as to
18 why disposition from my report does not reflect on
19 the spreadsheet for disciplinary action.**

20 Q. All right. When we look at Exhibit 4,
21 is this meant to be a complete list of all internal
22 affairs investigation from January '06 to today's
23 date?

24 A. **Yes, it is.**

25 Q. And you think that's accurate?

1 A. **That's the information I requested. I
2 have faith in the people who prepared it so, yes, I
3 would say it's accurate.**

4 Q. Okay.

5 A. **To my knowledge it's accurate.**

6 Q. Okay. All right. To make the record
7 clearer, there are four categories, maybe five in
8 your department for disposition of an internal
9 affairs investigation. Sustained, correct?

10 A. **Yes.**

11 Q. And that means that you found the
12 allegations true, both factually and in terms of
13 there being a violation?

14 A. **Yes.**

15 Q. Exonerated means there's factual truth,
16 but it wasn't a violation of policy or law,
17 correct?

18 A. **Basically, yes.**

19 Q. Unfounded means no factual basis for the
20 conclusion?

21 A. **That is correct.**

22 Q. Not sustained means the scales aren't
23 tipped, correct?

24 A. **Correct.**

25 Q. You can't say it happened or you can't

1 say it didn't happen, there's not enough evidence
2 to make that determination?

3 A. **Correct.**

4 Q. What is the standard of proof to tip the
5 scales between sustained and not sustained?

6 A. **The standard of proof, it's not beyond a
7 reasonable doubt, but it's not only a preponderance
8 of evidence, it's in between.**

9 Q. Would we find that standard set forth
10 somewhere in your policies?

11 A. **No.**

12 Q. Is that standard one that you have
13 communicated to people under your charge?

14 A. **Yes.**

15 Q. Given the dates of the incident
16 involving Jason King, and given the record you have
17 before you in Exhibit 4, can you tell which of
18 these entries reflect Jason King's investigation?

19 A. **I'm guessing, this is a guess on my
20 part, I'm guessing corruption.**

21 Q. November of '07?

22 A. **Yes, sir.**

23 Q. Would you agree with me that sexual
24 assault is an act of violence?

25 A. **I most certainly would.**

1 Q. Would it be proper and accurate or
2 improper or in anyway inaccurate to characterize
3 sexual assault by a police officer as excessive
4 force?

5 A. **You're asking me a legal question I
6 don't have a response to. If you could rephrase
7 the question I would like to respond to it.**

8 Q. Of course. And I certainly do not mean
9 it in the legal sense. I mean it in the sense I'm
10 talking to a police administrator. So, would it
11 be, from your standpoint as commander and chief of
12 a police agency, would it be appropriate to
13 characterize a sexual assault by a police officer
14 as excessive force?

15 MS. TEMPLE: Answer it if you can.

16 THE WITNESS: Did you say a sexual
17 assault?

18 QUESTIONS BY MR. RYALS:

19 Q. Yes, sir.

20 A. **A sexual assault by use of force, yes.**

21 Q. I want to ask a similar question to that
22 which I asked about Plaintiff's Exhibit 2. I asked
23 you if we went back before the date where this
24 exhibit starts, would the record look about the
25 same? Any significant differences? So I want to

1 ask the same question with regard to Plaintiff's
2 Exhibit 4. If we had records going back to when
3 you became the sheriff, do you believe the record
4 would look different than what it looks now?

5 A. **In numbers, probably. In nature of the
6 incidents, probably not.**

7 Q. How would the numbers be different, sir?

8 A. **I believe there would be fewer prior.**

9 Q. Do you have an explanation for why there
10 would be fewer prior to March of '06?

11 A. **You would have to ask previous sheriffs,
12 sir. I wouldn't have an explanation as to why he
13 managed the agency differently from me.**

14 Q. I'm going to -- and I owe you a big
15 apology. When did you become the sheriff, I'm
16 sorry?

17 A. **March 2005.**

18 Q. So I appreciate your answer. Prior to
19 March of '05, you can't speak to what the other
20 sheriffs did?

21 A. **No, sir.**

22 Q. But if we go back to March of '06 to
23 March '05 when you became the sheriff, would the
24 record appear to be about the same?

25 A. **Yes, sir.**

1 Q. In terms of the numbers and the
2 substance of the allegations?

3 A. **Yes.**

4 Q. And the results?

5 A. **Yes.**

6 Q. Now, Exhibit 4 reveals, and by the way,
7 I suppose there's a fifth category that I alluded
8 to before, and that would be the complaint was
9 withdrawn. Is that a category in your --

10 A. **No.**

11 Q. Once the complaint is made, you are not
12 going to permit a withdrawal of the complaint to
13 stop the process?

14 A. **No.**

15 Q. That's accurate, yes?

16 A. **Yes, that is accurate.**

17 Q. The determination that we see for the
18 dispositions on Exhibit 4, please talk to me about
19 the process by which that determination is finally
20 arrived at. What I mean to ask is, where does it
21 begin, does somebody make a recommendation, and
22 where does the buck stop?

23 A. **It begins with the internal affairs
24 investigator who obtains all facts and evidence and
25 circumstances that he can. And then he will, over**

1 **a period of time, every once in a while he may, if
2 it's going to be a long drawn-out investigation, he
3 will make periodic reports, but most generally at
4 the end of his investigation he will submit a
5 summary of his findings.**

6 Q. May I interrupt you?

7 A. **Sure.**

8 Q. To whom are the periodic reports made?

9 A. **Me.**

10 Q. Directly to you?

11 A. **Yes.**

12 Q. Not up the chain?

13 A. **I am the chain.**

14 Q. No. No. But not steps before you?

15 A. **No. Directly from the IA investigator
16 to me.**

17 Q. I see.

18 A. **When that is complete, I generally meet
19 with my four bureau commanders, and at that point
20 it's pretty well determined what the recommended
21 disciplinary action is, if the violations are
22 sustained or if the complaint is sustained.**

23 Q. Who makes the determination whether it's
24 sustained or not?

25 A. **Ultimately, I do.**

- 1 Q. But you would receive a recommendation
2 about that, correct?
- 3 A. **I meet with my four bureau commanders.**
- 4 Q. Does a recommendation come out of that
5 meeting?
- 6 A. **Yes.**
- 7 Q. All right.
- 8 A. **But I still have final say.**
- 9 Q. So there's an investigation. It really
10 starts with you become aware of a complaint,
11 correct?
- 12 A. **Yes.**
- 13 Q. And let me take a little side road. Are
14 the complaints always from citizens or can they be
15 from someone else?
- 16 A. **They can be from other government**
17 **officials, they can be from other employees.**
- 18 Q. Other members?
- 19 A. **They can come from anywhere.**
- 20 Q. Sworn members?
- 21 A. **Sure.**
- 22 Q. Have you had occasion to review
23 complaints lodged by other members?
- 24 A. **Not to date that I recall.**
- 25 Q. Is it accurate to say that most

- 1 complaints that result in internal investigations
2 in your department emanate from a citizens
3 complaint?
- 4 A. **Yes.**
- 5 Q. So the process is you receive a
6 complaint, you determine in your discretion that it
7 warrants a full-blown internal affairs
8 investigation?
- 9 A. **Yes, sir.**
- 10 Q. You have a choice at that point to treat
11 it else-wise, correct?
- 12 A. **Yes.**
- 13 Q. Once you determine that it warrants a
14 full-blown investigation, you direct that occur?
- 15 A. **Yes.**
- 16 Q. Do you direct that to a lieutenant, the
17 head of the professional standards?
- 18 A. **Yes.**
- 19 Q. And I take it he has the power to
20 delegate the investigation to someone else?
- 21 A. **No.**
- 22 Q. He conducts it himself or she?
- 23 A. **Yes.**
- 24 Q. If it's a long drawn-out investigation,
25 you will receive periodic updates?

- 1 A. **Yes.**
- 2 Q. And of course, you can always inquire,
3 if you want?
- 4 A. **Sure.**
- 5 Q. And the chain from that lieutenant to
6 you bypasses the commander of that bureau?
- 7 A. **Yes, it does.**
- 8 Q. The lieutenant completes the
9 investigation and submits to you, the sheriff, a
10 final report?
- 11 A. **The findings, yes.**
- 12 Q. Along with the findings, does he make a
13 formal recommendation or is it sort of implicit in
14 the findings?
- 15 A. **Generally it's implicit in the findings.**
16 **Different IA formal training teaches two different**
17 **ways. Some teach the IA investigator does make the**
18 **recommendation. Some teach no, that's not the**
19 **function of IA. I try to dissuade our IA personnel**
20 **from making that recommendation, that to me is a**
21 **command staff function.**
- 22 Q. You have obviously given this some
23 thought?
- 24 A. **Yes.**
- 25 Q. The report comes to you and then you

- 1 assemble your bureau commanders, the four captains?
- 2 A. **Yes.**
- 3 Q. And you have a meeting specific to that
4 particular IA file?
- 5 A. **Yes.**
- 6 Q. At that point everybody reviews the
7 record and there's a discussion?
- 8 A. **Yes.**
- 9 Q. How do those meetings run? Do you call,
10 for lack of a better term, a vote? How does
11 everybody feel?
- 12 A. **Opinion.**
- 13 Q. Opinion. Ultimately, at the end of that
14 meeting, it's your charge to make a decision,
15 sustained or not sustained?
- 16 A. **Yes.**
- 17 Q. Or any of the other categories?
- 18 A. **Yes.**
- 19 Q. Do you require unanimity among your
20 commanders before you will sustain a complaint?
- 21 A. **I don't require it, but as I think back,**
22 **I cannot recall not having it.**
- 23 Q. Is your role in the meeting to absorb
24 the opinions of your command staff or are you more
25 active in terms of expressing your views?

1 A. **My role is to listen.**
 2 Q. You're now in the vignette here, we've
 3 reached a point where the discussion is over, you
 4 have received input, opinions from your command
 5 staff and now the decision is yours to make?
 6 A. **Yes, sir.**
 7 Q. When you make the decision, is it in the
 8 moment or do you withdraw and think about it?
 9 A. **I think about it.**
 10 Q. After you make the decision, are you the
 11 one who then prescribes the discipline?
 12 A. **Yes.**
 13 Q. Because a decision wasn't made when
 14 you --
 15 A. **Because the recommendation comes from**
 16 **the command staff.**
 17 Q. When does that come, during that
 18 meeting?
 19 A. **Yes.**
 20 Q. So they will not only tell you, we think
 21 it should be sustained, but we think the member
 22 should be fired?
 23 A. **Yes.**
 24 Q. Or whatever it might be?
 25 A. **Suspended or whatever.**

1 Q. When you look at Exhibit 4, Sheriff, and
 2 thank you for giving me that account. I appreciate
 3 it. When you look at Exhibit 4, can you say
 4 whether any of the sustained complaints did not
 5 result in termination?
 6 A. **I would have to look at these reports.**
 7 **Dates and allegations.**
 8 Q. Not jogging the memory?
 9 A. **No.**
 10 Q. Fair enough. Let me ask a different
 11 question and even if you can't recall them all.
 12 A. **No, I can't.**
 13 Q. If you recall that one or more was
 14 sustained, but you know the person wasn't
 15 terminated, that would be good information. But I
 16 understand you don't recall. Maybe it will come to
 17 you before we go off the record today and you can
 18 share that if you would, please.
 19 A. **It may, but the way it's looking now**
 20 **it's not likely, but we'll try.**
 21 Q. Different question. As to the --
 22 anything but sustained, whether exonerated, not
 23 sustained or unfounded, is it possible that the
 24 member could still receive some form of discipline?
 25 A. **If it's exonerated, no. If it's not**

1 **sustained, no. If it's unfounded, no.**
 2 Q. When you evaluate an internal affairs
 3 allegation, are you evaluating only violations of
 4 department policy or are you evaluating violations
 5 of law, both of those things, something else? Is
 6 it purely policy, purely law, a combination?
 7 A. **Both of those and code of ethics.**
 8 Q. And the code of ethics would be found
 9 where, sir?
 10 A. **It's a part of our policy.**
 11 Q. I thought that would be your response.
 12 That's why I asked the question whether exonerated,
 13 not sustained or unfounded could result in
 14 discipline. And I have in my mind that somebody
 15 could be accused of say stealing and you find it's
 16 unfounded, you didn't steal, but in the course of
 17 the investigation you may discover they did
 18 something that would be a less egregious offense,
 19 failing to report or something, where because of
 20 the investigation, even though the internal affairs
 21 allegations are not sustained, there was something
 22 else that would have resulted in discipline?
 23 A. **Sure.**
 24 Q. Is that possible?
 25 A. **If during the course of the**

1 **investigation some other violations were noted that**
 2 **aren't a part of IA, yes, they could be disciplined**
 3 **on that.**
 4 Q. Do you recall that ever happening?
 5 A. **No.**
 6 Q. The limit of, the temporal limit of
 7 Exhibit 4 is March '06 to July of 2012?
 8 A. **Yes.**
 9 Q. Does that mean that there are no --
 10 strike that.
 11 There have been no concluded internal
 12 affairs investigations after July 2012?
 13 A. **That is correct.**
 14 Q. Are there any active pending
 15 investigations?
 16 A. **No, sir.**
 17 Q. Based on the raw number of disciplinary
 18 actions we see in Exhibit 2, compared to the raw
 19 number of disciplinary internal affairs matters in
 20 Exhibit 4, it appears to me that you are, for lack
 21 of a better term and you will correct me if I
 22 mischaracterize it, your management style is to be
 23 less punitive on the whole because you don't
 24 initiate a large number of internal affairs
 25 matters. And what I see in Exhibit 2 are a large

1 number of counselings and reprimands with
2 relatively minor punishment. Do these documents
3 and the raw numbers reflect something about your
management style?

4 **A. I don't believe necessarily because the**
5 **nature of the violation is going to determine**
6 **whether it's an IA, not what my personal feelings**
7 **are about the individual involved or was it alleged**
8 **on purpose or whatever. Regardless of the**
9 **management style, the severity of the complaints or**
10 **the alleged violation is what determines whether**
11 **it's an IA file or not. The reason you see so many**
12 **entries on Exhibit 2 is the fact that my philosophy**
13 **is if it's not documented, it didn't happen. So if**
14 **you have someone who has -- perpetually violates**
15 **policy, no matter how minor it may be, a continuous**
16 **violation warrants correction. So you go from a**
17 **verbal, don't do that anymore a couple times, and**
18 **then written down. Okay, now we've got a record of**
19 **this, so it's not in your best interest to continue**
20 **to do it, so to document and to correct negative**
21 **behavior.**

22 **Q. Before you became the sheriff we talked**
23 **about you were a captain, correct?**

24 **A. Yes, sir.**

1 **Q. Did you come up through the ranks in the**
2 **St. Charles County sheriff's department?**

3 **A. Yes, sir, I did.**

4 **Q. Was the first law enforcement job you**
5 **had as a deputy at the department?**

6 **A. Yes.**

7 **Q. When did you start?**

8 **A. September 1st, 1974.**

9 **Q. Promoted to sergeant at some point?**

10 **A. Promoted to sergeant at some point, and**
11 **then to lieutenant at some point, and to captain,**
12 **appointed sheriff.**

13 **Q. I take from your previous testimony it's**
14 **accurate to say that the St. Charles County**
15 **Sheriff's Department has changed significantly over**
16 **the years since you first came on?**

17 **A. Very significantly, yes, sir.**

18 **Q. Due in part I'm assuming to the growth**
19 **and population here?**

20 **A. Growth and population, and the change in**
21 **contemporary law enforcement throughout the**
22 **country.**

23 **Q. You would characterize that change as**
24 **positive? That is at least in your watch, you have**
25 **tried to make it more professional?**

1 **A. Yes, sir.**

2 **Q. To and including moving from the**
3 **sheriff's department model to the police department**
4 **model?**

5 **A. Yes, sir, the ultimate move.**

6 **Q. When we first started your examination**
7 **about three days ago, at least that's what it feels**
8 **like, you made some reference to politics. And the**
9 **record, of course, will stand on its own. Did you**
10 **say something about when you became the sheriff,**
11 **one of the things you were concerned with**
12 **addressing was the politics of the department?**

13 **A. Internal, yes.**

14 **Q. Internal politics. What do you mean by**
15 **that?**

16 **A. Every four years, the sheriff is up for**
17 **election, and traditionally there have been several**
18 **employees within the sheriff's department that**
19 **decide they want the sheriff's job. During the**
20 **course of a year, because the filing is in February**
21 **and you have got almost a year of campaigning, then**
22 **faction will form within the agency where you got**
23 **one group supporting one individual, another group**
24 **supporting another individual. And even though**
25 **people have the right to enjoin themselves in the**

1 **electoral process, when you get patrol officers**
2 **arguing among themselves and competing among**
3 **themselves for votes or support for their**
4 **particular candidate, it becomes totally disruptive**
5 **just to try to conduct the daily operations of the**
6 **sheriff's department. You have several detectives**
7 **and employees and different individuals that sit**
8 **next to each other, supposed to be working cases**
9 **together. Well, if there's a fundraiser one night**
10 **or rally another night for one of the candidates**
11 **and different one for the other one, they are not**
12 **going to get along. And there's just -- politics**
13 **is the biggest detriment to law enforcement in our**
14 **society today. So the more you can do to reduce**
15 **that, the better off the agency is going to be.**
16 **And every four years they don't have to worry about**
17 **oh, if I don't support this person and he or she is**
18 **elected sheriff, I'm screwed. Or I want to help**
19 **this one but I'm afraid that one will win and then**
20 **what do we do. So that was one of the reasons I**
21 **stayed out of every single electoral process from**
22 **the time I was deputy sheriff. And there's some**
23 **times I suffered for it because of failure to**
24 **support the sheriff who was elected. I didn't**
25 **support anybody, but since I didn't support that**

1 individual I suffered repercussions for it.

2 Q. Can you give me an example? Like a bad
3 assignment?

4 A. I was reduced in rank from captain to
5 lieutenant in 1995 because I didn't engage in
6 politics.

7 Q. Who did that?

8 A. Salters. But then I was promoted again
9 two years later.

10 Q. By Salters?

11 A. Yes, sir.

12 Q. Was that culture of the political, I
13 call it turmoil, but maybe you call it something
14 else?

15 A. It is turmoil.

16 Q. Was that something you experienced in
17 the department from the time you became a deputy
18 until --

19 A. Yes, sir, every four years.

20 Q. When you became the sheriff, did you try
21 to take steps to stop that from happening?

22 A. Yes.

23 Q. Aside from the movement to go to a
24 police department, did you take other steps?

-- A. The steps I took were primarily not

1 taking any steps. Prior to my being appointed or
2 elected, every sheriff that would come in would
3 have people who worked their campaigns or were
4 buddy buddy up to them, whatever. When that
5 sheriff took office they would move that person
6 over to another assignment, a more enjoyable
7 assignment, or would move a person out of a
8 particular position because the folks that
9 supported him didn't particularly care for him, a
10 supervisor or something like that or folks that
11 supported him. Detective jobs are considered, you
12 know, that's what everybody aspires to, supposedly,
13 from the patrol division. They would come in and
14 make wholesale changes in the detective's
15 department, even though some of these people have,
16 you know, three or four years experience and
17 thousands of dollars worth of training and
18 experience, but at the snap of a finger they would
19 go back to patrol and someone in patrol who
20 couldn't spell detective would go into the
21 detective bureau.

22 When I went in March 5th, 2005, I left
23 everybody exactly where they were. I didn't move a
24 single person. And everybody was sitting on pins
25 and needles, who's going to move, who's going to be

1 moved. And I put out the information, anybody in a
2 position now that is doing a job will remain in
3 that job. Those are who are not doing a good job
4 will be moved to a job that is better suited for
5 them. I have not moved one person. That's the
6 difference.

7 Q. In Mr. King's testimony, did you read
8 his description of sort of the in-group and out-
9 group, the good ol' boys and people who weren't the
10 good ol' boys?

11 A. Yes.

12 Q. And his description of how, for example,
13 if you're on the SWAT team you could get away with
14 things that other people couldn't get away with,
15 you read that?

16 A. I read that.

17 Q. What's your comment about that
18 description?

19 A. It's just the opposite. If you are
20 assigned to the SWAT team and you make any little
21 violation, someone else would probably get talked
22 to, you'll be removed from the SWAT team. Their
23 standards are higher than the patrol office. As
24 far as good ol' boys, that's a term that came from
25 years ago and it will last forever in law

1 enforcement.

2 Q. Right.

3 A. Every law enforcement agency has -- it
4 used to be what we had cliques, even in our agency.
5 Those have pretty well gone by the wayside, but you
6 still have a handful of patrol personnel, we'll
7 keep it at patrol personnel right now, who are
8 constantly trying to, I don't want to say disrupt
9 the organization, but they want to make others feel
10 they know more than they really do. And they want
11 a following, and they will particularly try to find
12 the newer officers coming in, you know, the strong
13 body with the weak mind at the time they come in,
14 and try to get them in that clique or group,
15 whatever you want to call it. And every agency has
16 it. Most of those are the low performers. Most of
17 them, not all of them, most of them are the low
18 performers who have for some reason or another
19 tried for advancement and failed or tried for
20 assignment to specialized units and failed for lack
21 of performance or they just weren't suited for that
22 position. So naturally it's human nature that they
23 are going to talk down the organization as a whole.
24 If you have an opening for a sergeant and you have
25 15 applicants, you can only appoint one, promote

1 one, so you are going to have one glad employee and
2 14 mad ones. Most of the mad ones will get over it
3 within a day or so, so you have that environment in
any law enforcement agency.

Q. Was Jason King a low performer, an
average performer, a good performer?

A. Jason King always stayed busy. He was
always looking for something.

Q. Looking for something in the law
enforcement context?

A. Yes. Looking for something in law
enforcement. He was hunting for the drugs, he was
hunting for the bad guys. The problem is Jason
wanted to do things that he wanted to do. The
things that come along with doing your job in law
enforcement he didn't want anything to do with,
they were troublesome, reports, maybe assignments
to a particular zone or something like that. He
always stayed busy, but he did best those things
only that he wanted to do. The rest of it was
average.

Q. He gave an account of how he worked in
the drug unit and then was removed from the drug
unit, you read that?

A. Yes.

Q. He related a conversation he had with
you in which you told him he didn't do anything
wrong, I'm paraphrasing, but you're going to be
removed from the drug unit and you can pick
whatever shift you want, and you're not in trouble,
but you're going back on patrol. Did he describe
that conversation accurately?

A. That conversation never took place.

Q. So that would be a no?

A. That's a lie.

Q. Do you know the circumstances of his
separation from the drug unit?

A. Yes. The commander of the drug unit
called me and asked me to remove him.

Q. Do you know why?

A. He had been involved in a couple
incidents while he was a member of the drug unit
that just didn't go well with the commander, and
the commander didn't trust him and he just called
and asked he be removed. And the way the drug unit
is set up, if the commander asks a participating
chief or sheriff to remove somebody, you do it, you
don't question it. Because that's such a small
group of individuals that have to be a cohesively
working organization. So he called and asked for

1 him to be removed and I removed him.

Q. Was he assigned to the power shift after
that?

A. He may have been. He would have
reported to the bureau commander who would have
checked the schedule to see what shift to put him
on at that time, wherever there was an opening.
And he may well have told him, what shift do you
want. It may have been the middle of the cycle or
something like that to where one person wouldn't
make a lot of difference on whichever shift it was.

Q. Was the power shift in any way a special
assignment or was it just normal patrol?

A. That's just another shift. You sign up
when the signup sheet goes out for whatever shift
preference you have. It goes out every four
months. When we had the fourth shift you had four
choices. You put down your first choice, second
choice, third choice, and fourth choice. And then
assignments were made from that. Depending on how
many requested midnights, how many requested
evenings, how many requested days, and how many
requested fourth shift, but it was just another
shift, yes.

Q. Do you in any way track when a member

1 has been sued and particularly sued for a violation
2 of constitutional rights?

A. I don't.

Q. Any way that's tracked in your
department?

A. Not in the department, county
counselor's office.

Q. I take it from that response that the
filing of a lawsuit does not prompt any internal
investigation?

A. No.

Q. That's accurate?

A. That's accurate.

Q. Why is that?

A. It may lead to it, but it doesn't prompt
it.

Q. I see. What's the difference?

A. You're talking about a filing of a
lawsuit?

Q. Yes.

A. We don't have any information to begin
with. If I get a lawsuit sent to my desk, it
automatically goes to the county counselor's
office.

Q. But you have the ability to read the

1 allegations?

2 **A. Sure.**

3 **Q.** And I guess that's what I'm thinking of.
You read allegations that a member did something
and that does not cause you to investigate whether
it happened or not?

7 **A. Not automatically.**

8 **Q.** Under what circumstances would it
9 happen?

10 **A. Well, obviously if the allegations are**
11 **egregious enough, and most of the time by the time**
12 **the lawsuit is filed it's something that occurred**
13 **months prior. So we would do an inquiry.**

14 **Q.** Is that every case you do an inquiry?
15 I'm not talking --

16 **A. Every case is discussed. As far as a**
17 **formal investigation, I'm trying to think of any --**
18 **yeah, because there's a lot of times the first we**
19 **have any knowledge at all that there's an issue or**
20 **problem is when we get the lawsuit filed. There**
21 **would not have been a citizen's complaint or**
22 **anything. And like I said, a lot of times this is**
23 **stuff that occurred months before, so that doesn't**
24 **automatically initiate an internal affairs**
25 **investigation. And you're asking what would. I**

1 **can't give you any specifics other than the fact**
2 **that if it is obviously serious enough allegations,**
3 **that we would do the inquiry. And many times the**
4 **inquiry would lead to an internal affairs**
5 **investigation.**

6 **Q.** Can you think of any occasion where that
7 occurred?

8 **A. Where we initiated an IA relevant to a**
9 **suit filed? At this point, I can't.**

10 **Q.** Can you think of any instance where you
11 initiated an inquiry as a result of a suit being
12 filed?

13 **A. Not right here, no, sir.**

14 **Q.** Would there be a record of that
15 somewhere?

16 **A. The only record would be if you compare**
17 **the IAs with the lawsuits filed or vice versa.**

18 **Q.** I'm just talking inquiries, not IAs at
19 this point.

20 **A. Okay.**

21 **Q.** Would there be a record of inquiries
22 that came as a result of lawsuits being filed?

23 **A. No.**

24 **Q.** From those answers, is it accurate to
25 say that the filing of a lawsuit doesn't go in the

1 officer's file the same way? For example, a not
2 sustained internal affairs complaint would go in
3 the officers's file?

4 **A. No, the lawsuit doesn't go in the**
5 **officer's file.**

6 **Q.** How about if the lawsuit results in a
7 verdict against the officer, does that prompt any
8 internal action?

9 **A. If the officer is found guilty of**
10 **whatever the allegations or charges are, yes.**

11 **Q.** Has that ever happened?

12 **A. Not that I recall at this moment.**

13 **Q.** How about if the case is settled, does
14 that affect the officer or your records in any
15 respect?

16 **A. No.**

17 **Q.** When the allegations about Jason King
18 came to light, that is, his encounter with my
19 client, did that surprise you that that occurred?

20 **A. Nothing surprises me.**

21 **Q.** Specific to Jason King and what you knew
22 with his history and all, does it surprise you?

23 **A. No, sir.**

24 **Q.** Can you think of anything in his past
25 that, looking back on it, you think you know that

1 could have been a predictor that this would occur?

2 **A. No. The only issues prior to that were**
3 **of car crashes, reports, nothing even anywhere**
4 **close to what those allegations were.**

5 **Q.** As a result of what Mr. King is alleged
6 to have done, was there any change in policy in
7 your department?

8 **A. No, sir, no direct changes.**

9 **Q.** Indirect change?

10 **A. Indirect changes, no. Conversations,**
11 **certainly. As far as specific changes, no.**

12 **Q.** If not in the policy, did you take any
13 action to, for example, emphasis a particular
14 policy that was already in existence? I could ask
15 this in a broader sense. Did you do anything in
16 response to these allegations? But I have a focus
17 purpose for it obviously.

18 **A. All I did was let my feelings pretty**
19 **well be known that as I had preached and talked**
20 **before, any actions you take as a police officer**
21 **could be on a camera or on a recorder and it may**
22 **not, that doesn't mean that you can do something**
23 **and think it isn't recorded and -- well, I will**
24 **leave it at that.**

25 **Q.** Well, one of the factual matters that

1 has arisen is the fact that he did not call out on
 2 the traffic stop, you're aware of that?
 3 **A. Yes.**
 4 **Q.** Without looking at it, I'm going to
 5 assume your policies require anytime a police
 6 officer makes a traffic stop, they are to call out?
 7 **A. Yes, sir. It's reenforced periodically.**
 8 **Q.** I see. And I suppose that rule has a
 9 number of different purposes, one is officer safety
 10 obviously, correct?
 11 **A. Yes.**
 12 **Q.** But also it provides a measure of
 13 monitoring and accountability, right?
 14 **A. Yes. It's an indicator of what the**
 15 **officer is doing or not doing.**
 16 **Q.** Were you aware that Officer King had
 17 been sued along with Deputy Cantillion, Ginnever,
 18 and Sherrill arising from an incident involving the
 19 attempted apprehension of a fugitive and entry into
 20 a home where excessive force was alleged?
 21 **A. I knew of the suit. I didn't know the**
 22 **particulars.**
 23 **Q.** And consistent with what you said
 24 before, your knowledge of this suit did not result
 25 in any either change in policy or investigation in

1 your department, correct?
 2 **A. No.**
 3 **Q.** And nothing about Jason King's alleged
 4 conduct, and that is alleged in that suit, would
 5 have been part of his record at the time of the
 6 incident with my client, correct?
 7 **A. Could you repeat that, please?**
 8 **Q.** Yes, sir. Nothing about the allegations
 9 in the lawsuit, and it's Sean Johnson against
 10 Cantillion, King, Ginnever and Sherrill?
 11 **MS. TEMPLE:** What's the date on that,
 12 please?
 13 **MR. RYALS:** Date on what?
 14 **MS. TEMPLE:** Of the lawsuit of those
 15 alleged individuals.
 16 **MR. RYALS:** 2003.
 17 **MS. TEMPLE:** Sheriff wasn't sheriff.
 18 **THE WITNESS:** No wonder I don't recall.
 19 **QUESTIONS BY MR. RYALS:**
 20 **Q.** Nonetheless, as far as you know, nothing
 21 about the allegations in that incident became part
 22 of Deputy King's record?
 23 **A. To my knowledge, you are correct, yes.**
 24 **Q.** That was the case under the sheriff in
 25 2003?

1 **A. Yes.**
 2 **Q.** And the case under your tenure, under
 3 your watch, correct? That is, had it occurred on
 4 your watch, it still would not have become part of
 5 his record?
 6 **A. No, sir it, would not.**
 7 **MS. TEMPLE:** How much longer do you
 8 have, approximately?
 9 **(OFF THE RECORD DISCUSSION)**
 10 **QUESTIONS BY MR. RYALS:**
 11 **Q.** Sheriff, we talked before about the
 12 aspects of running the department that involved the
 13 county and that the sheriff is free to make
 14 decisions on his own, and I just wanted to make
 15 sure that one of those types of policies or
 16 practices where you don't require the county's
 17 blessing or permission is the decision about how to
 18 handle complaints about members?
 19 **A. Correct.**
 20 **Q.** And similarly, how to handle, what to
 21 make of or what to do with allegations that might
 22 be raised in a civil rights lawsuit?
 23 **A. That's correct.**
 24 **Q.** You described political turmoil and, my
 25 word, and I was wondering if when former Sheriff

1 Swope was running, was there a lot of that
 2 political, is turmoil a good word?
 3 **A. Yes.**
 4 **Q.** Was there a lot of political turmoil
 5 over his campaign?
 6 **A. Worst in the history of the sheriff's**
 7 **department since I had been there.**
 8 **Q.** And I understand former Sheriff Swope
 9 was a sergeant at the time he ran for sheriff?
 10 **A. Yes.**
 11 **Q.** Had no command experience above being a
 12 line supervisor?
 13 **A. Correct.**
 14 **Q.** And I also had a perception that the
 15 rank and file deputies aligned with him, is that
 16 more or less accurate?
 17 **A. More or less, yes, sir.**
 18 **Q.** And then I suppose there were others in
 19 the department that didn't align with him, correct?
 20 **A. I'm sure, yes.**
 21 **Q.** What was it about that election that
 22 made it the worst in the history of the department?
 23 **A. Probably the fact that so many of the**
 24 **line personnel aligned with Tim Swope because of**
 25 **the promises he made that he wouldn't have been**

1 empowered to keep, but he didn't know that at the
2 time. Promises made, the buddy system, and he was
3 closer to the age of the average patrol officer,
4 and the sheriff at that time had pretty well
5 angered the rank and file personnel over a few of
6 his decisions.

7 Q. What were the decisions that angered
8 them?

9 A. Well, more than anything else, as it got
10 closer to the election time, he would put people in
11 charge so he could go out and politic, but he
12 didn't go out and politic. He just assumed he was
13 a two-term sheriff and nothing was going to, you
14 know, pop up that would take him out of office.
15 But he underestimated the power of money and the
16 campaign signs and not staying attuned to what was
17 going on within the agency.

18 Q. Remind me, you've run twice; is that
19 correct?

20 A. Yes.

21 Q. Did you have an opponent the first time?

22 A. Yes, I had six of them.

23 Q. All from the same department?

24 A. All but one.

25 Q. The second time did you have any

1 opponents?

2 A. Yes.

3 Q. How many?

4 A. One.

5 Q. From within?

6 A. Yes.

7 Q. Who was the opponent the second time?

8 A. Pat Riley.

9 Q. And the opponent the first time?

10 A. Oh, boy. Doug Salters, Dennis Davis,
11 Greg Cross, Riley was on that one also. It was
12 either a total of six -- oh, Ed Copeland. There
13 might be a couple more in there I forgot about.

14 Q. The first time you ran, was there -- I
15 know what you testified to about your reaction
16 after you were elected, which was different than
17 your predecessors, but the first time you ran, did
18 you perceive that there was any form of political
19 turmoil in the department over that election?

20 A. There was some, but not at the magnitude
21 that there had been in the past.

22 Q. How about during the second election?

23 A. Very little.

24 Q. Do you have an explanation as to why
25 there was very little when you ran for reelection?

1 A. I'm probably the hardest working sheriff
2 that's been there in the last 50 years. And I try
3 to be honest. I try to communicate with the
4 officers and pretty well have an open-door policy.
5 And I believe they were comfortable with me.

6 Q. No real ground swell of opposition that
7 would disrupt the operation of the agency?

8 A. No.

9 Q. Your department has several sources of
10 authority that guide the day-to-day operations.
11 That's not a question, it's a statement. U.S.
12 Constitution, would you agree?

13 A. Yes.

14 Q. The laws of the state of Missouri?

15 A. Yes.

16 Q. Department policy?

17 A. Yes.

18 Q. And you have a policy manual?

19 A. Yes.

20 Q. Are there additional directives or
21 guidance internally besides the department manual?

22 A. County ordinances.

23 Q. Sure.

24 A. From time to time there are directives
25 that may address a specific issue that's focused on

1 a particular time.

2 Q. Do you call those special orders?

3 A. Directives.

4 Q. How are those promulgated?

5 A. If they come from my level, they will be
6 posted on the bulletin board throughout. They will
7 be put on what we call desk book. It's a portion
8 of the mobile data terminal where every single
9 officer reads that desk book. They get the
10 information, and it will be read at roll call.

11 Q. Aside from the mobile data terminal, do
12 you send e-mails or voice mail blasts?

13 A. The division commander for patrol does
14 from time to time, bureau commander does from time
15 to time. If it's, I don't want to say a real
16 serious nature, but if it's something I want them
17 to know comes from me, the sheriff, I will have one
18 put out, voice mail.

19 Q. Voice mail. All right.

20 A. And I have a department wide e-mail that
21 I think I have used twice.

22 Q. Does every officer have a mobile data
23 terminal in their car?

24 A. Yes, every patrol officer, yes.

25 Q. Does every member have access to a

1 mobile data terminal in the department?
 2 A. **Yes.**
 3 Q. It sounds like that's the most efficient
 4 way to communicate --
 5 A. **Yes.**
 6 Q. -- through the MDTs. How about in-car
 7 cameras, does your department have them?
 8 A. **About 30 percent at this time.**
 9 Q. Is this a budgetary issue?
 10 A. **Yes. We increase from year to year.**
 11 Q. You would like to have them in all of
 12 them?
 13 A. **Well, once again, technology is**
 14 **changing. Available on the market now are the**
 15 **lapel cameras and lapel recorders.**
 16 Q. Right.
 17 A. **And I'm looking seriously at them to**
 18 **possibly replace the camcorders, the in-dash**
 19 **camcorders, because of the field of view of the**
 20 **camera, it's pointed the same way the officer is.**
 21 **You may have an incident occur that might not**
 22 **necessarily be in front of the car, but a camera**
 23 **will catch it. But our program has been, for the**
 24 **last several years, and with the end result the**
 25 **goal to have every car equipped. Now about a third**

1 **of the way through we are looking at another**
 2 **avenue.**
 3 Q. Do you prohibit individual officers from
 4 carrying any kind of recording device?
 5 A. **No.**
 6 Q. Do you encourage it?
 7 A. **Sure.**
 8 Q. Sheriff, during your tenure on the St.
 9 Charles County sheriff's department, have you ever
 10 reported another officer for misconduct?
 11 MS. TEMPLE: To whom, POST?
 12 QUESTIONS BY MR. RYALS:
 13 Q. Anyone.
 14 A. **Have I personally?**
 15 Q. Yes, sir.
 16 A. **Yes, once.**
 17 Q. How long ago?
 18 A. **Seven years, eight.**
 19 Q. Without the gory details, what was the
 20 misconduct you reported?
 21 A. **I fired him and I wanted POST to make**
 22 **sure he didn't go to work for another law**
 23 **enforcement agency.**
 24 Q. You reported misconduct to POST?
 25 A. **POST, yes.**

1 Q. Is that the only time you reported a
 2 terminated employee to POST?
 3 A. **So far.**
 4 Q. Was that Jason King?
 5 A. **No.**
 6 Q. That prompts my next question. What
 7 about the conduct of the officer reported to POST
 8 was different from any other person who's been
 9 terminated?
 10 A. **Most likely he was approached through**
 11 **the whole situation and his attitude, and my**
 12 **thoughts that he would probably do the same thing**
 13 **somewhere else.**
 14 Q. Was it excessive force?
 15 A. **Yes.**
 16 Q. Was this one of the individuals that
 17 Jason King testified about? There was, I think, a
 18 Jeremy Thom who hit a prisoner in the jail?
 19 A. **Yeah. No, it wasn't him.**
 20 Q. There was a, well, the names I have are
 21 James Gaddy.
 22 A. **No.**
 23 Q. Ryan Streck?
 24 A. **No.**
 25 Q. Lieutenant Cook obviously not, right?

1 A. **Correct.**
 2 Q. Not Lieutenant Cook?
 3 A. **No, you are correct, it's not Lieutenant**
 4 **Cook.**
 5 Q. Adam Kaup, K-A-U-P?
 6 A. **No.**
 7 Q. Would the individual appear on Exhibit 4
 8 in this case?
 9 A. **Yes.**
 10 Q. Would that be May '07?
 11 A. **Most likely, yes.**
 12 Q. Would you tell me who it is if I ask
 13 you?
 14 A. **Sure.**
 15 Q. Who was it?
 16 A. **Kerry Kamp.**
 17 Q. What did Kerry Kamp do to --
 18 MS. TEMPLE: He already told you, but
 19 you can repeat it.
 20 THE WITNESS: Handcuffed a minor and
 21 beat the -- assaulted him.
 22 QUESTIONS BY MR. RYALS:
 23 Q. In the back of the car?
 24 A. **Right.**
 25 Q. That's the one?

1 A. Yes.

2 Q. I asked you if you ever reported
3 misconduct and I meant from the beginning of the
4 police career until now, and I heard your answer is
5 to be one time and that would be a report to POST?

6 A. Yes.

7 Q. Did you ever see any misconduct that you
8 didn't report, and what I'm thinking about is saw
9 another officer use excessive force or make a
10 questionable search or any violation that you
11 didn't report to a supervisor or someone else?

12 A. Sure.

13 Q. What's the reason that you didn't report
14 that violation?

15 A. **The violations that I observed weren't
16 so egregious that I felt it necessary to take it to
17 a supervisor.**

18 Q. There's a phenomenon that I'm sure you
19 are familiar with, it's called different names, the
20 blue wall of silence or the code of silence, and a
21 rough definition of the code of silence is that
22 officers do not report misconduct of other
23 officers.

24 A. **All the time.**

25 Q. Okay. And I think I asked you before,

1 you are not aware of any instance when another
2 officer in your department reported an officer for
3 excessive force or a bad search or anything like
4 that?

5 A. **Not that I recall, no, sir.**

6 Q. Having worked in the department for?

7 A. **39 years, 11 months.**

8 Q. And counting?

9 A. Yes.

10 Q. Do you believe that that occurs, that
11 officers may witness other officers stepping over
12 the line?

13 A. **Sure they do.**

14 Q. And not report it?

15 A. **Sure they do.**

16 Q. Have you ever done anything to try to
17 change that?

18 A. **Well, yeah, we have in our policy that
19 an officer who observes another officer, policy
20 violations etc., etc., are required to report that
21 to a supervisor. Failure to do so is a violation.
22 There is one case within the last eight years since
23 I've been sheriff that we did charge an officer
24 with failure to notify a supervisor. I can't put
25 my finger on it right now, but I do recall, and he**

1 **was disciplined for having knowledge that an
2 officer violated -- it was a pretty serious
3 violation obviously, and failed to report it to the
4 supervisor. And that person was disciplined, but
5 right now I don't remember the specific case, but I
6 do recall the incident.**

7 Q. One time is your recollection?

8 A. **One time is all I recall at this time,
9 yes, sir.**

10 Q. Aside from having it in your policy that
11 it's a violation not to report misconduct, have you
12 done anything to emphasize that or try to prompt a
13 change in that behavior?

14 A. **Not directly, no, you know, I haven't
15 addressed the troops or anything like that. But
16 once again, it is in the policy and there are -- in
17 some aspects law enforcement is common sense, that
18 may be the problem. But I would say any law
19 enforcement officer working for a legitimate law
20 enforcement agency knows that if you witness
21 something of a serious nature, your incumbent to
22 notify the supervisor, and it's been done in the
23 St. Louis area on many occasions.**

24 Q. One time in your experience in your
25 department?

1 A. **One time that I recall at this time,
2 yes, sir.**

3 Q. When you said, made the remark about
4 common sense, do you mean to say it's common sense
5 that if you are an officer on the street and you
6 are running to the supervisor every time somebody
7 crosses a line, even if it's a minor or that you're
8 not going to survive very long as a police officer
9 on the street?

10 A. **It would be extremely difficult to have
11 a positive working relationship with your fellow
12 officers under those circumstances, yes, sir.**

13 Q. Because you've read the testimony of
14 Mr. King, I want to ask you about some specific
15 allegations he's made. The first one had to do
16 with Sergeant McCarver being out of the county.
17 Are you familiar with that?

18 A. **Oh, yes.**

19 Q. Was that on your watch?

20 A. **Yes, I believe it was.**

21 Q. What is your familiarity with it?

22 A. **When it was reported to me, I was
23 extremely frustrated to begin with, in addition to
24 angry. And there was a supervisor incident form
25 submitted by a bureau commander, and my**

1 recommendation was termination. He challenged it
2 and took it to the pre-disciplinary review board
3 and they came back with termination is a little
4 stringent under these circumstances considering the
5 officer's record etc., etc., and they recommended
6 suspension and I think there was extensive loss of
7 pay or something like that. So I didn't override
8 the board on that, but he was not terminated, but
9 he was severely disciplined.

10 Q. Could you have overridden the board?

11 A. Yes.

12 Q. Did he lose his stripes?

13 A. No.

14 Q. Is he still a member of your department?

15 A. Yes.

16 Q. Just in the briefest way, what were the
17 allegations? He left the county?

18 A. He left the county. He was the only
19 supervisor on shift and left the county without
20 notifying communications. He was in communication
21 with all of the officers and dispatch center at all
22 times. However, the fact remains he was physically
23 out of the county.

24 Q. Wasn't there something about his purpose
25 for leaving the county was a personal mission?

1 A. It was something personal with one of
2 his kids or maybe it was a girlfriend or wife or
3 something but, yes, he left for personal nature.

4 Q. Sergeant Knox ran code from Jeff City.
5 That was another thing that Mr. King testified
6 about. Are you familiar with that complaint about
7 him?

8 A. He didn't run code from Jeff City. If I
9 remember correctly, he and another officer were on
10 the way back to the county having been at training
11 and I believe it was Salem, and he was somewhere
12 around Warren County, Wright City area on I-70 and
13 there was a vehicle in front of them that they
14 followed for about two, three miles impeding the
15 flow of traffic. They couldn't pass on the right
16 because it was in the late evening, or early
17 evening, I guess. So Sergeant Knox hit the
18 overheads and beeped the sirens, the car moved
19 over, and they went on, turned the overheads and
20 the siren off and drove home. Next morning they
21 were in the field commander's office.

22 Q. Did he get any discipline for that?

23 A. I don't recall if he got any paper on
24 it. You had to know the field commander, he got a
25 very serious tongue lashing at the very least. I

1 don't recall if there was any paperwork.

2 Q. Were you the sheriff at that time?

3 A. Yes, I was.

4 Q. Who was the bureau commander?

5 A. Captain Kaiser.

6 Q. Captain Kaiser is no-nonsense when it
7 comes to a verbal reprimand, is that your
8 perception?

9 A. Yes. That's a kind way of putting it.

10 Q. There was also an allegation that

11 Sergeant Knox was promoted even though he failed
12 the test repeatedly and there was some sort of
13 favoritism in his promotion, do you recall reading
14 that?

15 A. I recall reading that. At the time
16 Sergeant Knox was promoted he was the most
17 qualified applicant at that time, and yes, he had
18 tested before, he had also been with the department
19 about ten years.

20 Q. All right. That promotion was on your
21 watch?

22 A. Yes.

23 Q. There was an incident described at a bar
24 in O'Fallon involving some Hispanic men, and I
25 think there was an assault or altercation involving

1 Adam Kaup?

2 A. Kaup, yes.

3 Q. Are familiar with that?

4 A. Yes.

5 Q. Was that while you were the sheriff?

6 A. Yes.

7 Q. Mr. King testified that you offered
8 assistance to Deputy Kaup by calling Joe
9 McCullough, a lawyer?

10 A. Deputy Kaup came into my office. I
11 believe it was the morning after the incident and
12 explained what had happened. It was not a
13 duty-related incident. It was off-duty and he was
14 visibly upset. Not to say down the road it
15 couldn't be, but at the time it was not a
16 department issue and I knew Mr. McCullough had
17 worked with law enforcement officers in the past,
18 and I asked if he would give Adam a call and check
19 to see what his status is, and basically that was
20 it, and that was it.

21 Q. You called Mr. McCullough or you had
22 Mr. --

23 A. Yes.

24 Q. Oh, okay. Did the incident giving rise
25 to that conversation between you and Deputy Kaup

1 ever result in any discipline of Deputy Kaup?

2 A. **Nope.**

3 Q. Did you have any involvement in that
matter after that conversation with him?

4 A. **None whatsoever.**

5 Q. Was there ever an inquiry?

6 A. **No.**

7 Q. And I take it no internal affairs
8 investigation?

9 A. **No.**

10 Q. What information, Sheriff, did you have
11 about what had occurred?

12 A. **The information provided to me was that**
13 **the officers were at a local club. There was a**
14 **St. Peters officer, I believe, retiring. I believe**
15 **it was a retirement party for him and they were**
16 **outside in the parking lot leaving, and there were**
17 **two or three Hispanics, one of them approached**
18 **Deputy Kaup and he got in his face or shoved him or**
19 **something. Well, Deputy Kaup then shoved him and**
20 **he fell back. If I remember correctly, I don't**
21 **believe Deputy Kaup had anything to drink that**
22 **night. And the police were called, and all of the**
23 **information was provided and, well, I did hear**
24 **later on there was no prosecution on the part of**

1 **the subjects that had been jailed.**

2 Q. You said the subject didn't want to
3 prosecute?

4 A. **That's what was reported to me by**
5 **O'Fallon police, yes.**

6 Q. Another individual, Jeremy Thom,
7 T-H-O-M, I think.

8 A. **Thom.**

9 Q. Thom, thank you. There was a fall,
10 alleged fall in jail.

11 A. **He backhanded a prisoner in the holdover**
12 **cell and went directly from there to the captains**
13 **office and reported what had happened.**

14 Q. He did?

15 A. **Yes.**

16 Q. Did that result in an inquiry?

17 A. **That resulted in a suspension, I**
18 **believe.**

19 Q. Did that have to come through you, sir,
20 the suspension decision?

21 A. **I have to approve every suspension, yes,**
22 **sir.**

23 Q. Was that the recommendation or was that
24 your decision?

25 A. **That was the recommendation that came to**

1 **me and I approved it.**

2 Q. James Gaddy, use of a taser or
3 something, does that ring a bell?

4 A. **I have no knowledge of that whatsoever.**

5 Q. Ryan Streck fired a shotgun into the
6 engine compartment of his car?

7 A. **Yes, he did.**

8 Q. And apparently there was some
9 allegations about him holding himself out to be an
10 FBI agent and maybe stalking a woman. That was the
11 testimony. Do you know anything about that?

12 A. **I don't know anything about that.**

13 Q. Did Deputy Streck get disciplined for
14 the shotgun incident?

15 A. **Yes, he did.**

16 Q. Another bit of testimony was --

17 A. **That was done -- back up a little bit.**

18 Q. Yes, sir.

19 A. **That incident with the shotgun, that**
20 **vehicle was not moving. That vehicle was roadside.**
21 **He was placing the shotgun back into the carrier**
22 **and he caught the trigger.**

23 Q. I see. That bit of testimony raises an
24 interesting point. Mr. King testified that there
25 was a very active rumor mill in your agency,

1 probably no different than any other police agency.
2 Would you agree with that?

3 A. **I would agree with that, yes.**

4 Q. Let's take Deputy Streck's incident.

5 The way Deputy King describes it, Deputy Streck was
6 messing with the trigger and discharged it, right?

7 A. **Uh-huh.**

8 Q. And the way you describe it, it was an
9 accident because he was actually putting the weapon
10 back into its holder?

11 A. **Yes.**

12 Q. So that's an example, at least, of some
13 of the facts being true and circulating about and
14 at least some of the facts being disputed, correct?

15 A. **Who's disputing the facts? You have to**
16 **know the facts before you can dispute them.**

17 Q. Yes. Yes. Maybe that's a poor way to
18 phrase the question. The information that was
19 disseminated was contrary to your conclusion?

20 A. **Yes, sir.**

21 Q. There was testimony about Lieutenant
22 Cook and troubles with his wife, maybe assaultive
23 behavior, did you see that?

24 A. **Oh, yes, yeah.**

25 Q. Did those events or anything like that

1 occur on your watch?

2 A. No.

3 Q. And then apparently Lieutenant Cook was
also in a motorcycle collision?

4 A. Yes, he was.

5 Q. Single vehicle?

6 A. Yes.

7 Q. Severely injured apparently?

8 A. Yes.

9 Q. Deputy King testified that, I think he
10 said I have it on good authority that his BAC was
11 over the legal limit when he got to the hospital,
12 do you have any knowledge of that?

13 A. None other than the BAC, or any
14 conversation relevant to that at all, was never
15 brought to Lieutenant Cook's attention by either
16 the Wentzville Police Department that handled the
17 incident or the hospital staff.

18 Q. Was the collision, the wreck, motorcycle
19 wreck, on your watch?

20 A. Yes.

21 Q. Was there any investigation about the
22 circumstances?

23 A. No. It was off duty.

24 Q. Now, you certainly have, and I think the

1 record will reflect there are things that have
2 happened off duty that are within your purview,
3 correct? If an officer --

4 A. Oh, yes, yes. There are some that are
5 and some that aren't.

6 Q. If someone was driving while intoxicated
7 and had a collision, that would be a matter that
8 you would be interested in investigating
9 internally, correct?

10 A. Yes.

11 Q. Mr. King also testified that he was
12 asked by someone who should have no knowledge of an
13 internal investigation involving Mr. King, about
14 the investigation, suggesting that what should have
15 been secret was out and being disseminated in the
16 rumor mill, I guess, first of all, are you aware of
17 whether that occurred?

18 A. I'm aware of the conversation or the
19 comments that Mr. King made. I do know that the
20 only person in that room at the time of that IA was
21 Mr. King and the IA investigator. And I know the
22 IA investigator, and there's no way on earth he
23 would say anything to anybody. Now, if that
24 information came back as he was saying, it did not
25 come from my mouth, my office or the IA

1 investigator. To say that someone wasn't outside
2 listening, you know, walls are thin, some walls are
3 thin, or Mr. King could possibly have told someone
4 else about it and the rumor mill gets going and it
5 got back to him the way it went out, but as far as
6 the IA officer or my office, that information never
7 came from there.

8 Q. What was the first you knew about the
9 allegations that resulted in Mr. King resigning?

10 A. The shift supervisor on duty that
11 evening came and informed me of what the lady had
12 come into our office to report.

13 Q. Based on your almost 40 years of
14 experience in the department, when that information
15 first was brought into the department, is that the
16 sort of information that would typically spread
17 through the rumor mill or is that sort of the
18 information that would typically have a lid put on
19 it? And here's what I'm getting at. If you assume
20 Mr. King didn't say anything to anyone, and maybe
21 that's a wrong assumption, but would you expect,
22 based on your experience with how the rumor mill
23 operates in your department, when Mr. King had that
24 incident and it became more than just a traffic
25 stop, would you expect that that information would

1 have traveled through the department?

2 A. Most likely it would travel through the
3 department, but it would not be from the command or
4 supervisory level. It would be from the rumor
5 mill, from the ground troops. They talk to each
6 other all the time.

7 Q. Okay. My perception, especially where
8 there's an active rumor mill, is if an officer gets
9 in a pursuit or uses force against someone that
10 morning, by third shift everybody knows it
11 happened. It's not officially disseminated, right?

12 A. Right.

13 Q. But when you say rumor mill, we're
14 really talking about a rumor mill on steroids?

15 A. Exactly.

16 Q. It's a small, close-knit community where
17 there are no secrets?

18 A. And very few facts.

19 Q. As rumor mills are, right?

20 A. Yes.

21 Q. The last bit of testimony I want to ask
22 you about is when Mr. King said he came off the
23 drug unit, he said he was told by someone to steer
24 clear of the drug unit members?

25 A. Yes.

1 Q. He said he attempted to contact you,
2 have a meeting with you through Captain Kaiser, was
3 denied by Captain Kaiser, and Captain Kaiser later
4 came to him and said the sheriff will talk to you,
5 then he had a discussion with you about it, did
6 that happen?

7 A. Yes.

8 Q. Do you believe he was told to steer
9 clear of the drug unit members?

10 A. Yes, he was.

11 Q. Did that come from you?

12 A. Yes, it did.

13 Q. Can you explain why?

14 A. Because the commander of the regional
15 drug task force called me and informed me that
16 Deputy King was interfering with their operations,
17 continuing to contact the operators left in the
18 unit about cases they were working and cases he was
19 working, and he was told they wanted him to stay
20 away.

21 Q. And then you had a meeting with him and
22 is that what you communicated to him?

23 A. Yes.

24 Q. So his account of why he was told to
25 steer clear was not accurate?

1 A. Totally inaccurate.

2 Q. I've asked you a lot about specifics and
3 I know this feels like an oral examination, it's
4 not meant to be. But there may have been other
5 things that he said that come to mind that I
6 haven't asked you about, so the question I pose to
7 you now is, is there anything else from his
8 testimony that you haven't already talked about
9 that you believe is inaccurate or less than
10 accurate?

11 A. How much time do you have?

12 Q. Well, until you have to be in Jeff City.

13 A. Okay. Some of the more notable ones,
14 one incident on Forest Drive where Deputy King
15 alleged that one of the SWAT officers shot an armed
16 subject who had a pistol to his head and that when
17 a nonlethal round hit the arm it made the pistol go
18 off and shot himself in the head. For one thing he
19 got the wrong officer involved. That was not
20 Sergeant Knox. That was an officer named Tom
21 Jones. Tom Jones deployed the nonlethal round that
22 took the arm away from the subject, and he brought
23 it back and pulled the trigger and committed
24 suicide. What Deputy King probably didn't know is
25 I was there that night myself.

1 Q. You witnessed it?

2 A. Yes. So that's one. I wish I had my
3 list. Give me a couple seconds here.

4 Q. Take your time, Sheriff.

5 A. Believe it or not, we've covered several
6 of these. There was one particular incident that
7 he recalls. He refers several times to other
8 officers, like all cops do. You know, other
9 officers get by with this and the others were
10 disciplined for this.

11 Q. Yes.

12 A. And he referred to one of his favorite
13 supervisors was Lieutenant Martchink, and that he
14 thought he was treated fairly, more fairly by him
15 than anybody else. And that, I forget exactly what
16 the relationship is there, but he indicated
17 Marchand was not on the good list, so to say, so he
18 got in trouble and he was busted, demoted, and
19 moved out of the bureau. What had happened was the
20 other shift members, Lieutenant Marchand's shift
21 members reported him staying at home, said the same
22 thing, used the walkie and the MDT that you can
23 take into the house to make it appear he was out on
24 the street. So he had a couple other supervisors
25 on his shift that every once in a while he would

1 give them a S.A.D. day. He would say don't come to
2 work, supervisory appreciation day. Well, the
3 reason he was doing this was because he was staying
4 home when he was supposed to be out working a
5 shift, supposed to be supervising his personnel.
6 So one of the other officers finally got tired of
7 it, he knew it too, so he reported to the division
8 commander. And, of course, this can't be
9 happening, so over a period of a couple weeks,
10 through our own surveillance, for lack of a better
11 term, it was determined that he was indeed, number
12 one, lying on the radio and was staying home. And
13 we found out the extent of the sad days was more
14 than what had been anticipated. So the officer,
15 the supervisors who were taking off, putting in
16 time sheets as if they had worked, but the
17 lieutenant said this is a S.A.D. day, I will take
18 care of it. So the end result was Lieutenant
19 Marchand was demoted to a deputy, moved to prison
20 transport, and all the supervisors he had given
21 S.A.D. days were required to pay all of those hours
22 back to the county. But Deputy King didn't think
23 that that was right, he thought it was just done
24 because Lieutenant Marchand wasn't one of the good
25 ol' boys.

1 Q. May I interrupt you?

2 A. **Sure, go ahead.**

3 Q. That event with sworn personnel staying
home or --

A. **Given the shift off.**

6 Q. That seems to have popped up at a number
7 of different times during your testimony. Was that
8 a common problem in your department where deputies
9 who report from home are not being truthful about
10 when they are on duty or when they are not?

11 A. **Well, we demoted that one. We suspended**
12 **three or four of them, terminated another one, so**
13 **when it's known, it's addressed. Because of the**
14 **take-home car program, we respond to the office two**
15 **days a week. I'm not so naive as to not think that**
16 **one of those officers who goes 10-41, signing on,**
17 **may still be putting on his boots or his shoes.**
18 **But as a routine practice, extensive time reporting**
19 **someplace where they're not, no. I think he made**
20 **some reference to guys being in sandals and**
21 **underwear, something like that. Well, like the**
22 **rest of his story, how would he know if the**
23 **person's in sandals or if he's at home or not**
24 **unless he did it several times himself. But no,**
25 **once it's determined, then it is addressed.**

1 Q. Without editorializing, it seems to me
2 that the number of times that you caught people
3 doing that, it seems rather high. And I don't mean
4 to accuse, but did you ever identify this program
5 that permits deputies to go on duty from their home
6 as opposed to reporting to the station as any kind
7 of supervisory problem?

8 A. **Well, I don't know if it's a major**
9 **problem. Most of the time the supervisor is at the**
10 **office, at the station at the beginning of the**
11 **shift doing paperwork or other supervisory**
12 **functions anyway. As far as, there again, once the**
13 **supervisor determines that or suspects this person**
14 **is reporting on the radio at a location where he**
15 **really isn't, we have had them report on a radio**
16 **where they are and pass a supervisor in an unmarked**
17 **car and had lied about their location. I hate to**
18 **admit it, cops do stuff like this every once in a**
19 **while. And once it's determined, once it's**
20 **discovered, then it's dealt with and it's very**
21 **serious.**

22 Q. The question was poor. What I should
23 have said, in your mind is it a supervisory issue,
24 an issue for you or your command staff to address,
25 closer supervision of when the deputies actually

1 report in?

2 A. **With the demographics of the county,**
3 **that would be virtually impossible. Like I said,**
4 **90 percent of them report in and they are where**
5 **they are when they say they are there. And they**
6 **are required to be in their zone 15 minutes prior**
7 **to the beginning of the shift. That pretty well**
8 **bars anyone reporting from home.**

9 Q. I see. I interrupted your thought.

10 A. **No, that's fine. One other one, like I**
11 **said, from all the accounts from Jason King in**
12 **there, there isn't a single one that is factual,**
13 **not a single one. The last one that I will address**
14 **is there was allegations in there that I provided**
15 **-- or I intervened with DWI arrests by telling**
16 **supervisors to go to this officer and say, you**
17 **know, make this go away. I don't want that to go**
18 **away. I will sit right here before you and swear**
19 **on my mother's life and she's still alive. I've**
20 **been in law enforcement 40 years and not once in**
21 **that 40-year career have I ever intervened in a DWI**
22 **case. That includes the two that my niece got.**
23 **That's all I have to say about that.**

24 Q. All right. And your testimony is
25 complete as far as anything else you want to

1 comment about?

2 A. **Yes.**

3 MR. RYALS: Let's mark these two because
4 they were provided.

5 (PLAINTIFF'S EXHIBIT NOS. 7 AND 8 WERE
6 MARKED FOR IDENTIFICATION)

7 QUESTIONS BY MR. RYALS:

8 Q. Sheriff, I'll represent to you
9 Exhibits 7 and 8 were provided to us in response to
10 our request for production, and I would like you to
11 identify what each of those exhibits are, please.

12 A. **Exhibit 7 is in reference to changes we**
13 **made in our policies relevant to IA investigations**
14 **or other policy violations.**

15 Q. So Exhibit 7 reflects a memo to you from
16 someone who you directed to research that question?

17 A. **Yes.**

18 Q. As far as you know, that's complete and
19 accurate?

20 A. **Yes, it is.**

21 Q. Exhibit 8, documents signed by Jason
22 King accepting receipt of St. Charles County
23 personnel administration program and policy manual
24 and updates of sheriff's department policies and
25 procedures. Each of those pages sort of speaks for

1 itself, would you agree?

2 A. Yes, sir.

3 Q. I mean, there is nothing -- they are
responsive to requests for personnel file or
something like that?

6 A. Yes, sir.

7 Q. I take it from the fact that Exhibit 7
exists that you were provided with a copy of our
request for production?

10 A. Yes, sir.

11 Q. Did you attempt to gather all of the
information that we asked for?

13 A. No, sir.

14 Q. Because you weren't going to give us the
internal affairs records?

16 A. Correct.

17 Q. Anything else?

18 A. No, sir. I believe that was it. Or a
19 DB number or something. I believe that was all.
20 Everything else I produced for you.

21 Q. And the last thing I want to talk to you
22 about is I have a number of reports of statements
23 that you made to the media over Chris Hunt's
24 situation. And they are in quotation marks, so I
25 just want to read them to you and see if you said

1 them.

2 A. Okay.

3 Q. "If he was a rogue cop, he wouldn't be
4 with the St. Charles County Sheriff's department".
5 Did you say that?

6 A. In relation to what?

7 Q. Well, I will show it to you. I think
8 it's from KSDK.

9 A. If it's in the media I must have said
10 it, or something close to it.

11 Q. And then the next one, Sheriff Neer was
12 shocked. "There are no words to really describe
13 it. Very angry. Frustrated in the judicial system
14 that we are sworn to uphold. And it's turned and
15 used against us." Now I will place that before you
16 so you can see if I read it correctly.

17 MS. TEMPLE: If you recall the context
18 in which it was said.

19 THE WITNESS: I don't recall the
20 context. I would have to read the whole interview.
QUESTIONS BY MR. RYALS:

22 Q. It's a good point. My question is, do
23 you admit saying it or do you not deny it? If you
24 want to add, I said it in this context, feel free.

25 A. I don't recall the context of the

1 conversation, but like I said, it's there in black
2 and white. Media says I said it.

3 Q. Do you have a recollection of saying it
4 or words to that effect?

5 A. No. Which interview was this? I don't
6 recall saying it. I won't deny saying it. I
7 remember having the interview, but as far as the --

8 Q. And the last one I want to ask you
9 about, I'm going to read it. "We will not provide
10 law enforcement to Montgomery County or Warren
11 County under the circumstances because I'm not
12 going to take a chance of one of my personnel being
13 charged with a crime while they're on duty, doing
14 their jobs in either one of these counties".

15 A. That's not what I said.

16 Q. Do you recall what you said?

17 A. I don't remember exact words other than
18 there was -- emergency circumstances was included
19 in that comment, life threatening situations to the
20 citizens or officers of Warren County would be the
21 exception. This dealt with the routine daily
22 services that we provided to them in the past, such
23 as bomb disposal, SWAT, crime scene processing,
24 things like that. But as far as life threatening
25 situations, I made the statement in there, that was

1 exempt, that's not in there.

2 Q. So let me make sure I understand. The
3 quote is misleading in that it's accurate in terms
4 of day-to-day operations, correct?

5 A. Yes.

6 Q. You will no longer send members of your
7 department to those counties for like SWAT or bomb
8 disposal, whatever?

9 A. Right.

10 Q. But were there to be an emergency?

11 A. Life threatening situation.

12 Q. You would not withhold your people?

13 A. No.

14 Q. Thank you, Sheriff. I'm going to pass
15 the examination to Mr. Hood and I think I will be
16 finished finally, but while he's examining you I
17 will take a look at my notes. Do you want to
18 change spots for the court reporter's benefit?

19 CROSS EXAMINATION

20 QUESTIONS BY MR. HOOD:

21 Q. All right. Sheriff, this won't take
22 very long. I don't have very many questions for
23 you. Mr. Ryals covered most of what I was going to
24 cover so that saved us quite a bit of time. Just a
25 quick review of some of the documents here, if you

1 would. Exhibit 4, if you would bring that up,
2 please. Exhibit 4 is the internal investigation
3 summary over the past several years with the
disposition of each one of those. I just have some
4 questions about the allegations and nature of
5 complaints of those that were sustained, not those
6 that were exonerated, not those that were not
7 sustained or unfounded. Were all of these
8 potentially termination of employment events?

9 A. **No.**

10 Q. So which one of the sustained events
11 would you say was obviously not necessarily a
12 termination event?

13 A. **Once again, I don't recall what each one
14 of these investigations involved. The one
15 July 11th would not -- that's a sustained, would
16 not have -- improper computer usage, I'm sorry,
17 would not result in termination unless there was
18 some long history of violations prior to that.
19 Well, the November 7th one would have resulted in
20 termination. The other one, sir, I don't recall
21 the nature of those investigations.**

22 Q. Okay. That's fair enough. But under
23 most circumstances you would normally consider
24 stealing by a police officer to probably warrant at

1 least consideration of termination?

2 A. **Stealing most likely would result in
3 termination.**

4 Q. Yes, sir. Falsification of police
5 records, that would likely be consideration for
6 termination?

7 A. **That's pretty close, yes.**

8 Q. So other than the improper computer
9 usage, depending upon the circumstances, most of
10 those would at least involve consideration of
11 termination, depending upon the individual facts of
12 each of them?

13 A. **Yes. There would be serious
14 disciplinary action up to and including
15 termination.**

16 Q. Thank you. Are criminal convictions
17 normally termination events in your department?

18 A. **Normally. Well, classify what you're
19 talking about as criminal conviction. If someone's
20 convicted of trespassing or peace disturbance,
21 that's not a terminable offense. Traffic
22 violation, once again, depends on the
23 circumstances.**

24 Q. How about a DWI?

25 A. **Not automatically.**

1 Q. Off duty?

2 A. **Not automatically. Oh, on duty, yes.**

3 **On duty is automatic.**

4 Q. Now a DWI on duty would be a --

5 A. **Yes.**

6 Q. Would stealing time in the department's
7 allegations or nature of complaints be considered
8 the same as stealing property? When I say stealing
9 time I mean --

10 A. **Yes.**

11 Q. -- multiple occasions when you are
12 actually in your area or when you are on duty or
13 when you are doing the job you are supposed to do?

14 A. **By stealing time you are referring to
15 saying you are working when you're not working?**

16 Q. Yes, sir.

17 A. **That's stealing.**

18 Q. That is stealing, and that is a
19 consideration for termination?

20 A. **Yes.**

21 Q. Do you recall how many, or if any, of
22 these internal affairs investigations on Exhibit 4
23 were passed on to the prosecuting attorney of St.
24 Charles County?

25 A. **One.**

1 Q. And that would be the November 7th,
2 Jason King?

3 A. **Yes, sir.**

4 Q. None of the others?

5 THE WITNESS: I didn't have issues --

6 MS. TEMPLE: Right. But he didn't ask
7 that, he asked --

8 THE WITNESS: Oh, were any of them
9 referred to --

10 QUESTIONS BY MR. HOOD:

11 Q. Right.

12 A. **Oh, two of them were referred.**

13 Q. And the other one would be?

14 A. **March 6th.**

15 Q. On Exhibit 2, we don't have to refer to
16 any specific one, but I'm going to ask you a
17 question about terminology on an exhibit. There
18 are several times incidents are described as
19 conduct unbecoming a deputy. Would you give me a
20 brief description of what that might entail?

21 A. **Conduct unbecoming a deputy can be
22 subjective, cursing at a citizen. One incident, I
23 can't say it, you are writing this all down. Being
24 disrespectful towards a supervisor or speeding in
25 the city of St. Charles, exceeding the speed limit.**

1 Q. While on duty?

2 A. **While on duty, yes. Those things that**
3 **would draw attention to the officer in his official**
4 **capacity that makes a department look bad.**

5 Q. So these unbecoming conducts are usually
6 considered fairly serious?

7 A. **Yes.**

8 Q. Okay.

9 A. **Well, they can be, yes.**

10 Q. You referred several times to your
11 progressive discipline policy?

12 A. **Yes, sir.**

13 Q. Has a copy of that been provided?

14 MS. TEMPLE: We will be happy to.

15 A. **That comes from our county's personnel**
16 **administration program, and I just duplicate it in**
17 **the sheriff's department policies and procedures.**

18 QUESTIONS BY MR. HOOD:

19 Q. Thank you. And if you would, Exhibit 1,
20 I'm going to ask you some specific questions off of
21 that, sir. And particularly paragraph two where it
22 says the sheriff shall be notified of any -- as
23 soon as practical, of any complaint against the
24 office or it's employees that may require an
25 internal investigation.

1 A. **Yes.**

2 Q. Just to be clear, I know that you spoke
3 about this with Mr. Ryals earlier, but I wasn't
4 quite sure. So you are really the first responder
5 or decider of whether or not there will be an
6 internal investigation?

7 A. **I am the only decider, yes, sir.**

8 Q. And you are the one who assigns the
9 personnel from internal affairs or professional
10 standards division?

11 A. **Yes, sir.**

12 Q. No one else has that ability?

13 A. **On a rare occasion, if necessary, I may**
14 **have to assign a criminal investigator who has the**
15 **background and training in internal affairs**
16 **investigations.**

17 Q. Okay.

18 A. **In case Lieutenant Tiefenbrun is out of**
19 **town or unavailable.**

20 Q. And paragraph 11 in bold, however, no
21 statements of culpability from the suspect officer
22 shall be given to the prosecuting attorney where
23 that statement was obtained absent of a Miranda
24 warning?

25 A. **Yes.**

1 Q. Is it the usual custom or practice of an
2 internal affairs investigating officer to give a
3 Miranda warning or to not give a Miranda warning?

4 A. **No. We won't do both. The internal**
5 **affairs investigator does the internal**
6 **investigation and a separate officer would do a**
7 **criminal investigation. And nothing that is said**
8 **in the internal affairs interview, obviously, can**
9 **be provided to --**

10 Q. How about during an inquiry where you
11 talk to the officer about the incident in question?

12 A. **Well, if someone is doing an inquiry and**
13 **he comes up, he or she comes up with an**
14 **incriminating statement, all hands go up, you know,**
15 **it stops right here.**

16 **MR. HOOD: All right. I believe I'm**
17 **finished. That was much easier, wasn't it?**

18 THE WITNESS: Thank you, sir.

19 REDIRECT EXAMINATION

20 QUESTIONS BY MR. RYALS:

21 Q. Just briefly. The practice of not
22 calling out on stops, does that occur in your
23 department?

24 A. **I'm sure it does from time to time.**

25 Q. Have you identified it as a problem?

1 A. **No.**

2 Q. You are satisfied that most of the time
3 officers call out?

4 A. **Most of the time I'm satisfied they do**
5 **because most of the officers are aware of the fact**
6 **that it's a safety issue to begin with, and being,**
7 **you know, part of the policy. Once again, if radio**
8 **traffic's heavy there may be a rare occasion. We**
9 **encourage them, if radio traffic is heavy, you are**
10 **going to make a vehicle stop, just go ahead and**
11 **stay with that vehicle until the radio is clear,**
12 **then do your license number and location, go ahead**
13 **and make the stop.**

14 Q. Can an officer call out, so to speak, on
15 the MDT?

16 A. **Yes.**

17 Q. And that wouldn't be dependent on radio
18 traffic, correct?

19 A. **No.**

20 Q. You don't have GPSs in the car, correct?

21 A. **No.**

22 Q. That is, you have no way of tracking
23 where your patrol vehicles are at by GPS?

24 A. **Not yet.**

25 Q. After the incident involving Mr. King

1 and my client, you determined that he didn't call
2 out, correct?

3 **A. Yes.**

4 **Q.** Did that prompt you to reemphasize your
5 policies about you shall call out?

6 **A. Yes. It was brought up again at roll**
7 **call shortly after that as a reminder. Like I**
8 **said, we put reminders out frequently. Use the**
9 **radio or be sure to give your location when the**
10 **dispatcher calls you. So many people just say go**
11 **ahead. Well, we want you to tell us, where are**
12 **you.**

13 **Q.** Last thing. Mr. King testified that his
14 perception was that the St. Charles County
15 Sheriff's Department deputies were, my word,
16 respected, also my word, perhaps a little bit
17 feared by the public. He described pulling up, you
18 know, where maybe officers from a different agency
19 were encountering a subject and then when a deputy
20 shows up the subject's attitude changes. And that
21 prompted the question I was trying to get at. Do
22 you know the reputation in the law enforcement
23 community of the St. Charles County Sheriff's
24 Department?

25 **A. Yes, I do.**

1 **Q.** What is it?

2 **A. It's a professional organization, well**
3 **equipped, well trained, and for the most part, well**
4 **respected by the community and other law**
5 **enforcement agencies within the county. I have**
6 **never heard that we are feared by anybody.**

7 **Q.** All right. And the reputation in the
8 community outside of law enforcement, have you
9 answered that question as well?

10 **A. What do you mean outside law, the**
11 **general populus?**

12 **Q.** Yes.

13 **A. The majority of the responses we get**
14 **from the general populus are positive in nature.**
15 **We get those complaints as does everyone. But I'm**
16 **very pleased with the complimentary e-mails that**
17 **come through from time to time. And we have a**
18 **reputation, once again, of being a professional**
19 **organization.**

20 **Q.** Mr. King also described two styles of
21 patrol policing, and again I'm characterizing. You
22 may disagree with how I characterize the testimony,
23 but essentially sort of an aggressive style,
24 proactive, self initiated activity, compared to an
25 officer who is not proactive, not aggressive, sort

1 of answers calls for service and goes home at the
2 end of the day. Is that generally a fair
3 characterization?

4 **A. That's a pretty good characterization of**
5 **just about any law enforcement agency in our area,**
6 **not just in our area, but in the country. You have**
7 **those that just wait for the phone to ring and go**
8 **to the call. You have others that will work a**
9 **burglary and they will follow up, they'll do an**
10 **area canvas if there's not a big call load waiting,**
11 **and the supervisors encourage that, follow up on**
12 **their own cases, and make those cases, if they can,**
13 **and that's that many less or fewer that detectives**
14 **are burdened with. But yeah, in answer to the**
15 **original question, every agency has both kinds.**

16 **Q.** Which model do you try to foster in your
17 department?

18 **A. I try to foster follow up those**
19 **investigations that you work, the stealing. I**
20 **mean, if you have an armed robbery or something**
21 **like that, chances are you're not going to get the**
22 **opportunity to work it. You're going to follow up,**
23 **given the opportunity, car spottings, things of**
24 **this nature. Areas in the county where we are**
25 **having problems or what Sam Dotson now is calling**

1 **hot spots, we've been doing hot spot policing for**
2 **years on this side of the river. And those**
3 **officers while not on call will go to those areas**
4 **where they know we have problems and observe, make**
5 **vehicle stops on traffic violations, probable**
6 **cause, and are active in trying to find something.**
7 **And you have those that, like I said, will wait**
8 **till they get a call, they handle that call, they**
9 **do the report and then they patrol, waiting for the**
10 **phone to ring again. But every agency has all**
11 **kinds. I promote follow up on the calls that**
12 **you're assigned. If you have a little old lady**
13 **whose heat goes out in the middle of winter and the**
14 **neighbors are wanting to do an area check for her,**
15 **or a check for wellbeing. I had a couple officers**
16 **that there was a lady that needed heat in her**
17 **trailer. They got a hold of the social service**
18 **agency where they very well could have -- another**
19 **officer may have just said -- call the people back,**
20 **said she's okay. Yes, I promote staying busy**
21 **because when you stay busy, you stay out of**
22 **trouble.**

23 **Q.** Well, I've got to follow up with how do
24 you -- is that idle hands are the devil's tools?

25 **A. Something like that.**

1 Q. With regard to person-to-person
2 encounters with citizens, subjects, would you say
3 your officers are encouraged to be assertive and
4 firm or something else? I don't know what the
5 something else would be.
6 A. **They're encouraged, if they are writing
7 a traffic violation, to write the violation and
8 inform the violator and then leave. Don't sit
9 there and try to argue with somebody over a traffic
10 violation roadside. Number one, you get run over
11 by a tractor-trailer, and you're not going to win
12 the argument anyway. I encourage firmness but
13 fairness. Don't talk to those people in a way you
14 wouldn't want to be talked to. Everyone you stop
15 is not a bad guy or a bad gal. And you don't call
16 them by a name that is not on their driver's
17 license.**

18 Q. Well, there's got to be an example, off
19 the record.

20 (OFF THE RECORD DISCUSSION)

21 QUESTIONS BY MR. RYALS:

22 Q. Thank you, Sheriff, that's all the
23 questions I have.

24 CROSS EXAMINATION

QUESTIONS BY MS. TEMPLE:

1 allegation slash nature of complaint, do you have
2 any idea why it's listed as corruption as opposed
3 to a sexual assault as Mr. Ryals suggested?

4 A. **I believe that's probably because that's
5 what the prosecutor classified it.**

6 Q. Is that what Mr. King was charged with,
7 corruption?

8 A. **Yes.**

9 Q. When you were having the internal
10 affairs investigations, were each person given
11 polygraph tests, both the plaintiff and Mr. King?

12 A. **Yes.**

13 Q. Did each of them pass?

14 A. **Yes.**

15 MS. TEMPLE: Thank you. I don't have
16 anything further.

17 MR. RYALS: Only that we respectfully
18 disagree with the decision to withhold documents
19 that were to be produced. And I reserve the right
20 to recall the sheriff when we get a ruling on
21 either our motion to compel or your objections. So
22 other than that, do you want to tell him about
23 reading or not?

24 MS. TEMPLE: You have the right to read
25 your deposition transcript, or you can waive and

1 Q. I have a few questions. Sheriff, the
2 power shift Mr. Ryals talked to you about, and you
3 read Mr. King's characterization of it, is that a
4 fair characterization where they just get to go
5 wherever they want and have free rein in the
6 county?
7 A. **No. Power shift or fourth shift is just
8 another shift. Officers who are assigned to the
9 fourth shift are assigned zones just like any other
10 officer on first, second, or third shift. If
11 manpower allows, from time to time they will be
12 assigned -- someone in power for the fourth shift
13 will be assigned to what we call roles, there will
14 be an R next to the names, and that means that
15 during that shift they can go into the pockets of
16 problem areas, where they know the problems are and
17 do proactive patrols in there. However, they are
18 still responsible for handling calls for service.
19 If that zone car is tied up, they are still
20 responsible for backing up other officers.**

21 Q. Do they have, those people on the fourth
22 shift, the power shift, do they have supervisors?

23 A. **Yes.**

24 Q. On Plaintiff's Exhibit Number 4,
25 November '07, has corruption listed as the

1 assume she took down accurately what was said.
2 It's up to you.

3 THE WITNESS: At this time?

4 MS. TEMPLE: Yes.

5 THE WITNESS: I will waive that reading
6 and trust the reporter.

7 (SIGNATURE WAS WAIVED)

1 CERTIFICATE

2

3 STATE OF MISSOURI)
4) SS
5 COUNTY OF ST. LOUIS)

6 I, TINA MARIE CATLETT, a Certified Shorthand
7 Reporter before the County of St. Louis, State of
8 Missouri, do hereby certify that pursuant to Notice
9 came before me at the St. Charles County
10 Counselor's Office, 100 North Third Street, Suite
11 216, St. Charles, Missouri,

12 SHERIFF TOM NEER,

13 who was by me first duly sworn to testify to the
14 truth and nothing but the truth of all knowledge
15 touching and concerning the matters in controversy
16 aforesaid in this cause; that the witness was
17 thereupon carefully examined under oath and said
18 examination was reduced to writing by me; that the
19 witness agreed to waive signature by agreement of
20 all counsel; and that this deposition is a true and
21 correct record of the testimony given by the
22 witness, and that this deposition is now returned
23 to the Court.

24 I further certify that I am neither attorney
nor counsel for nor related nor employed by any of
the parties to the action in which this deposition
is taken; further, that I am not a relative or
Plaintiff of any attorney or counsel employed by
the parties hereto or financially interested in
this action.

IN WITNESS WHEREOF, I have hereunto subscribed
my name on this 2nd day of August, A.D., 2013.

Tina Marie Catlett, CCR

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